

Exhibit 2

1

2 UNITED STATES BANKRUPTCY COURT

3 | SOUTHERN DISTRICT OF NEW YORK

4 | Case No. 12-11343-reg

6 | In the Matter of:

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8 PINNACLE AIRLINES CORP, et al.,

9

10 | Debtors.

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14 United States Bank

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16 | New York, New York

17

18 | May 16, 2012

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21 | B E F O R E:

22 HON. ROBERT E. GERBER

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2 Doc# 23 Motion to Authorizing Debtors to Obtain Post-Petition
3 Financing, (II) Granting Liens and Providing Super-Priority
4 Administrative Expense Status, (III) Granting Adequate
5 Protection to Prepetition Secured Parties, (IV) Authorizing
6 Debtors to Assume Connection Agreements with Delta Air Lines,
7 Inc., and (V) Allowing General Unsecured Claim.

8

9 Doc #217 Motion for Relief from Stay As to Standard Aero Ltd.
10 for the Purposes of Terminating CF34-3B1 Engine Hourly Rate
11 Program Repair and Services Agreement, By and Between Standard
12 Aero Ltd. and Northwest Airlines, Inc., n/k/a/ Delta Air Lines,
13 Inc. and Related Assignment Agreements, and for Related Relief.

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23 MARK TAUB, Mohawk Capital

24 MICHAEL TIAN, Interested Party

25

1 PINNACLE AIRLINES CORP, ET AL.
2 P R O C E E D I N G S

3 THE COURT: All right. We're going to go right into
4 Pinnacle without a recess. Come on up, please. Is Ms.
5 Beckerman here?

6 MS. BECKERMAN: I'm here.

7 THE COURT: Oh, okay.

8 MS. BECKERMAN: I'm just in the back.

9 THE COURT: Yes, I see you're in deep right field.
10 Okay. Come on up, please.

11 (Pause)

12 THE COURT: Ms. Beckerman, I would like to get your
13 recommendation as to whether I should deal with DIP financing
14 or Standard Aero first. I think you might want to deal with
15 DIP financing first, because you have more people in the
courtroom who might be interested in that.

16 MS. BECKERMAN: Yes, Your Honor, that is correct.
17 We'd like to proceed in that order. And also because we have a
18 deadline for our closing, which would have to occur potentially
19 tomorrow, at the latest Friday; so we'd like to make sure we
20 get the order entered, if you are going to approve it.

21 THE COURT: All right. I want to get appearances, and
22 then I want everybody to sit down. I have some preliminary
23 comments.

24 Ms. Beckerman, I see you and your partner, Mr.
25 Qureshi.

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1 MS. BECKERMAN: Yes, Your Honor. Lisa Beckerman and
2 Abid Qureshi from Akin Gump on behalf of the debtors.

3 THE COURT: Okay. From the creditors' committee?

4 MR. MILLER: You have Brett Miller and Erica Richards
5 from Morrison & Foerster on behalf of the creditors' committee.

6 THE COURT: All right. Mr. Miller, you might or might
7 not know, but this morning we docketed the order making you
8 official.

9 MR. MILLER: Thank you very much, Your Honor.

10 THE COURT: Okay. Next?

11 MR. JONAS: Good morning, Your Honor. Jeff Jonas from
12 Brown Rudnick. With me are Jim Stoll and Jessica Conte, on
13 behalf of a number of shareholders. And we filed the
14 objection, Your Honor.

15 THE COURT: Yes. And I saw your 2019.

16 MR. JONAS: Thank you, Your Honor.

17 THE COURT: Fine. Anybody else appearing today?

18 MS. GASPARINI: Elisabetta Gasparini, Office of the
19 United States Trustee.

20 THE COURT: Right.

21 MR. KOLKO: Your Honor, Hanan Kolko of Meyer, Suozzi,
22 English & Klein, on behalf of the United Steel Workers' Union.

23 THE COURT: Right.

24 MS. ELLERMAN: Your Honor, Paige Ellerman on behalf of
25 Standard Aero.

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1 THE COURT: Good morning.

2 MR. SELTZER: Good morning, Your Honor. Richard
3 Seltzer of Cohen, Weiss and Simon for the Air Line Pilots
4 Association.

5 THE COURT: Okay. Mr. Seltzer, good morning.

6 MR. SELIGMAN: Good morning, Your Honor. David
7 Seligman on behalf of Delta Airlines.

8 THE COURT: Say that slower, please.

9 MR. SELIGMAN: I apologize, David Seligman on behalf
10 of Delta Airlines.

11 THE COURT: Oh, okay. You've got Delta, Mr. Seligman.

12 MR. MORRIS: And this is Ryan Morris, an equity holder
13 who filed a pro se objection.

14 THE COURT: Yes, Mr. Morris. I have some questions
15 for you, if you want to be heard more than just listen in.

16 MR. MORRIS: Yes.

17 THE COURT: Let me ask you right now. I was surprised
18 when I read your papers that you didn't say what your role was
19 in this case, and I was also surprised that you didn't say what
20 equity you hold. Would you tell me now, please, if, in fact,
21 that's so.

22 MR. MORRIS: Oh, yes. I'm an equity holder in this
23 case. And I own approximately 900,000 shares personally and
24 through an LLC. And I was a pre-petition holder for the
25 majority of those shares. And also I filed a 13(d) along with

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1 Wayne King in February.

2 THE COURT: Now, when I was encouraged the bankruptcy
3 rules committee to make individual holders trying to influence
4 the Court, subject to Rule 2019, the rules committee didn't
5 agree with me. Do you have any other disclosable interest,
6 like short positions or interests in any securities or debt of
7 the debtor other than the shares you just told me about?

8 MR. MORRIS: No, just the shares. I don't believe any
9 other debt is publicly traded. It's just held by secured
10 creditors.

11 THE COURT: No, I understand that. But I also assume
12 there might be, for instance, trade debt out there.

13 MR. MORRIS: Oh, no. I don't believe any trade debt
14 is actually traded. I've been asking, actually, but I don't
15 believe any has traded yet.

16 THE COURT: Okay.

17 MR. MORRIS: And I certainly don't own any.

18 THE COURT: All right. I'll give you your opportunity
19 to be heard when it's your turn.

20 MR. MORRIS: Thank you.

21 THE COURT: I'll hear first from you, Ms. Beckerman,
22 but here's where I want everybody to focus their discussion.
23 Obviously, I've read the papers.

24 It appears to me that this is simply another case in
25 which I'm going to be making the call under the Farmland

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1 factors. And I think many of us, at least in my side of the
2 bench, believe that Jerry Venters' analysis of those factors
3 and the applicable considerations is the best that's out there.

4 He identified, I think, five factors. And Ms.
5 Beckerman, you tended to talk about the business judgment of
6 the debtor more than once, as if business judgment's the only
7 factor. I think I have to make at least two other important
8 inquiries; one is the best interests of the estate analysis, as
9 to which, based on the papers, the estate seems to be way
10 ahead; but also to determine whether each of the terms that's
11 in there are appropriate. And on one or two of them, I have
12 some reservations.

13 I do want to hear from the equity objectors as to what
14 they think I should be doing for an alternate source of
15 financing if I were to disapprove this. Because I think the
16 record, at least insofar as I'm aware, is undisputed at this
17 juncture, that Delta is the only game in town, and that the
18 debtor desperately needs this money; and that whether Delta did
19 anything bad or not in the past, the fact is that the debtor
20 has a very serious liquidity need, especially after June 1st.

21 Now, what I will want to hear from the objectors, not
22 so much from the steel workers, but from the equity holders, is
23 what I'm supposed to do without a source of DIP financing. I'm
24 sure this got the attention of the creditors' committee too. I
25 mean, every creditors' committee in the world likes to get a

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1 better deal, but they're also realists in many instances.

2 Now, the main thing that I want to talk about is the
3 reasonableness of the terms, which is another one of Judge
4 Venters' Farmland factors. My principal concern, to tell you
5 the truth, isn't so much on the control over the case, because
6 it appears to me that's an amalgam of things that DIP lenders
7 always ask for, and also is affected by the fact that -- I
8 think, but I need both sides to confirm or help me understand
9 better -- that there are reasonableness considerations attached
10 to most of them. But the main concern I have, folks, not so
11 much from the ALPA reservation of rights, but from the steel
12 workers, who I understand represent ground workers, principally
13 mechanics and some of the flight attendants, is obviously we're
14 going to have labor relations issues coming down the road, and
15 I want these to proceed on a constructive basis until and
16 unless our backs are against the wall. I want people
17 negotiating until and unless our backs are against the wall,
18 and I want to hold a contested 1113 hearing only if I must and
19 only if I have no alternative.

20 I want to have the flexibility in the case to help
21 labor and management get to a consensual deal if at all
22 possible. And I want both sides to address the extent to which
23 anybody's taking away my discretion or my flexibility in
24 achieving that goal. Now, I take no position on the merits of
25 any possible future difference in perspective between

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1 management, on the one hand, and the unions on the other. But
2 I want an environment in which I can help people come to their
3 own deal if I possibly can.

4 Ms. Beckerman, I'll hear from you first. Those are
5 the things that I need you to address. Then I'll hear from
6 your opponents. I'll want to hear from the creditors'
7 committee, Mr. Miller, after I hear from Ms. Beckerman, if as I
8 sense, you're generally supportive of what she has to say. And
9 then I'll hear from the objectors.

10 MS. BECKERMAN: Good morning, Your Honor. Lisa
11 Beckerman on behalf of the debtors. Your Honor, I guess we'll
12 start with the best interests of the estates, because I think
13 that was what you flagged first. You've already highlighted
14 that the testimony that we put in by declaration, our motion
15 and our supplemental declarations, all indicate that we are in
16 a situation where we need this financing, and if we don't
17 receive it in connection with -- by early June, we will start
18 having problems and running out of money. So it is not a
19 situation where this is an optional situation for the debtors,
20 as you've already noted.

21 So the debtors had to go out and search for financing.
22 Mr. Shapiro's declaration, which is also in front of Your
23 Honor, as well, as a supplemental declaration, indicates that
24 we shopped it extensively. There were several periods of
25 shopping it. It was shopped in January; it was shopped in

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1 March; and then shopped after the filing, so that there really
2 isn't another party that is prepared to lend. And some of the
3 reasons for that are also set forth in Mr. Shapiro's
4 declaration, including the fact that the collateral that we
5 have available to pledge parties and the value of that is less
6 than the amount of DIP financing that we need to seek.

7 And that made this loan fairly unattractive to many
8 parties, because if there were to be a liquidation, they
9 couldn't be assured that they were going to have any kind of
10 value that would enable them to cover their loan. And it's
11 only because, obviously, there are a lot of interests that
12 Delta has in connection with Pinnacle's survival, as its
13 largest customer, that it was willing to step up to the plate
14 and propose a DIP even though it has risks to Delta that if, at
15 the end of the day, there's meltdown, they won't be covered on
16 their collateral.

17 And the reasons that you see that type of structure --
18 in this case Delta but if you look at the cases we've cited in
19 our pleadings, United as well as Delta's own Chapter 11 --
20 where the DIP financing was from a more unusual source than one
21 would typically think, someone who had an interest in the
22 company surviving, in those cases, credit card companies, but
23 in our case, our largest customer; and because it had an
24 interest in surviving, we obviously then went and negotiated
25 terms with Delta, and we also pursued other options. We did,

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1 obviously, have one party that submitted a term sheet to us,
2 but then pulled out. Post-petition we continued. And this is
3 our option that we have on the table.

4 Now, why is that in the best interests of the estates?
5 Well, I think we put in our papers the analysis that the board
6 considered in connection with this. And it's not just a
7 business judgment analysis; it's the best interest of
8 stakeholders' analysis, Your Honor.

9 So on one hand, we had negotiated for a month with
10 Delta. We had a DIP facility that on its face, on the
11 economics, is very compelling, because obviously we have
12 undersecured -- someone who's not getting sufficient
13 collateral, but is not charging us fees, and charging us twelve
14 and a half percent interest, which as you know, in this market
15 for a DIP, is not bad. And the other person who had put down a
16 term sheet initially and then pulled out, was going to charge
17 twenty-five percent. So from the perspective of what's
18 available for the estate, on a terms basis, this obviously,
19 economically, was the best choice.

20 The board obviously was not that excited, not
21 surprisingly, as I think comes out in Mr. Menke's declaration,
22 about being in a situation where we would have to renegotiate
23 terms of our contracts as part of the deal to get a DIP. And
24 that was part of what was considered, of course. But the board
25 determined that we should pursue the Delta alternative while we

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1 looked at other things -- which we did, including this other
2 DIP lender that pulled out -- and we then, at the end of the
3 day, after we'd spent a month negotiating the best terms we
4 could possibly get under the contract -- as I think Mr. Menke's
5 declaration makes clear, and if it gets to testimony, I'm sure
6 it'll come out further, and it was very heated, serious
7 negotiations.

8 We certainly didn't end up where we got everything or
9 where Delta got everything. I think the testimony would show,
10 Your Honor, that for example, Delta gave us a number of things
11 they didn't want to give us. We ended up with exit financing,
12 because Mr. Shapiro, myself, the board and management was not
13 comfortable going into this process where we were taking on
14 this debt, operating the business, and not being sure how we
15 were going to ultimately get out. And we also had change-of-
16 control issues that are in our existing contracts, which would
17 sort of limit our ability to go outside and get equity. So
18 that was one consideration that we had.

19 Delta also did not want to -- we had a very serious
20 negotiation about rates. Not surprisingly, Delta wanted to
21 have lower rates; we wanted higher rates. We ended up
22 somewhere in the middle. We had an issue about the length of
23 the term of the CRJ-200 contract, which is the contract that
24 governs 140 of our aircraft. So the vast majority --

25 THE COURT: Those are made by Bombardier?

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1 MS. BECKERMAN: Yes. And so what happened with that
2 negotiation, Your Honor, is we would otherwise have had a
3 contract that was going to expire in 2017. We're sitting here
4 in 2012 trying to consider a reorganization that will probably
5 confirm in 2013. As you know, in our business, when you're
6 looking at trying to reorganize a business, you need to have
7 some kind of fairly long-term ability to have a business. If
8 140 out of your 181 aircraft are going to go away at the end of
9 2017, that is a very difficult business to reorganize. So one
10 of the things we got was an extension on the contract.

11 On our side, we obvious --

12 THE COURT: On the CRJ-200s?

13 MS. BECKERMAN: Yes, the CRJ-200s. We obviously
14 wanted other things that we didn't get. Not surprisingly, we
15 negotiated for numerous things. We negotiated to try to get
16 minimum utilization. Our contract did not have that pre-
17 petition before we modified it. It doesn't have it now. We
18 did get fixed margin, which is an improvement on that, because
19 we have to be paid so much per aircraft, so it's a sort of
20 compro -- somewhat of a compromise. Not as much as we wanted
21 on minimum utilization, but it's something that we negotiated.

22 We did not get our change of control waived. We
23 obviously wanted that. That was part of the tradeoff on the
24 exit financing. We did not get our change in our timing of
25 cash flows. One of our contracts, our CRJ-200 contract that

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1 we've been talking about, Your Honor, we get paid in arrears.
2 And obviously from -- and it's been historically like that.
3 That's not new. But our other contracts we get paid in
4 advance. So we wanted to move our CRJ-200 contract to be paid
5 in advance like our other contracts, because it improves our
6 working capital. But unfortunately, we weren't able to get
7 that either. So we had a lot of back and forth, Your Honor.

8 Then we got to the issue of our outstanding disputes
9 under our Connection agreements, because as Your Honor can
10 imagine, if we're about to assume contracts, we have to be
11 comfortable that we're going to have no outstanding disputes or
12 we've resolved them, because otherwise we're going to have
13 arguments about cure costs that would come up at the time we
14 assume a contract, or we'd have just ongoing disputes with our
15 largest customer that we're trying to operate in a Chapter 11.
16 Not very easy to make our way through that either.

17 And Delta was, pre-petition, eighty percent of
18 Pinnacle's flying. And with the wind-down of United and the US
19 Air flying that we talked about on the first day, and
20 subsequently with Your Honor in court, Delta will wind up,
21 ultimately when the wind-downs are completed, being a hundred
22 percent of Pinnacle's operations.

23 We also looked at the issue of our unprofitable
24 contract. We had three contracts, one of which was
25 historically very unprofitable. That's our 2007 CRJ-900

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1 contract that governs sixteen aircraft that we own. We tried
2 to renegotiate that. We just couldn't possibly work out a
3 situation on the economics that was workable from Delta and our
4 perspective; and we couldn't continue to assume that contract
5 and fund those losses forever, so we negotiated an orderly
6 wind-down.

7 And as part of that orderly wind-down, we had a
8 dispute about a claim, because Delta understandably said,
9 you're modifying this agreement; we're going to have to go out
10 and find a replacement; we're going to have some argument about
11 our damages. And we had a broad range of dispute on that
12 claim, Your Honor. They started out at 200 million; we were at
13 30. We couldn't close the gap. So what we ended up
14 negotiating is that they have an allowed claim, because even we
15 believe they have an allowed claim of some dollar, but the
16 amount won't be determined until a subsequent time with Your
17 Honor, therefore allowing the creditors' committee and other
18 parties to come in and weigh in about the claims process, and
19 that at the end of the day, you'll determine what claim they
20 have for damages.

21 THE COURT: Pause, please, Ms. Beckerman. To what
22 extent, if any, is there a thumb on the scales or any pressure
23 on me to reach a particular result as to the amount of the
24 allowed claim?

25 MS. BECKERMAN: No thumb on the scales, Your Honor.

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1 That's why we kicked it to you.

2 THE COURT: All right.

3 MS. BECKERMAN: We just really couldn't agree on it.

4 We had a lot of back-and-forth; we narrowed our gap,
5 ultimately; we got to where we were probably about ninety
6 million dollars apart. But ninety million dollars, in the
7 scheme of this case, is an awfully big claim. And we could --
8 and just the dispute. And so we obviously couldn't agree to
9 that.

10 Then we were in the situation of trying to resolve
11 those outstanding disputes I mentioned. And there'll be a --
12 there's a lot of arguments about those. So I do think I need
13 to address that.

14 The first thing is that we had, just like any other
15 business where you have three contracts, where you have a
16 billion dollars of revenue for a business, in aggregate, of
17 which Delta's eighty percent of, you have commercial disputes
18 that arise under these contracts. Very normal. So what
19 happens under the terms of the contracts is that -- leaving
20 aside the pilot reimbursement and the rate reset, which I will
21 come back to in a minute and talk about -- if one party says I
22 don't think that the amount you charged me for this -- because
23 we have charges that go back and forth under the terms of our
24 agreement; they have to reimburse us for pass-through amounts;
25 we have amounts that we pay them for certain services they

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1 provide to us. So money goes back and forth all the time
2 between ourselves under the contract, and that's been
3 historically true ever since these contracts existed. That's
4 not a new thing about any amendments to this contract.

5 So where we were is that we had a number of disputes
6 that had arisen, because they see a bill for our maintenance
7 and they think that maybe our maintenance amount included
8 something like beyond what heavy maintenance has covered, or we
9 had other services provided. So there's a dispute. And the
10 parties agree there's a dispute. And then what happens under
11 the contract is until the parties reach a resolution or we have
12 to go to court and get ultimately a litigated resolution, there
13 is no amount that gets paid or set off for that amount. It's a
14 dispute that's sitting there, in essence, in abeyance.

15 And we had disputes like that that went back and forth
16 on both sides. And they were not insignificant, Your Honor. I
17 think the testimony will explain that from our perspective and
18 Delta's perspective, these were in the tens of millions of
19 dollars. So we had -- on each side. And so then we had the --
20 so that was our disputes outstanding.

21 And we also had disputes where we had paid money or
22 Delta had paid money to us, and where then, when somebody
23 audited a bill, they argued that -- because have a period of
24 time for truing up and auditing under the contract -- they had
25 an argument that something wasn't correct. That's another just

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1 good-faith dispute that was out there. Not due and payable,
2 just good faith.

3 Then we get to the issue which is probably the biggest
4 issue about these -- the setoff we did pre-petition, which is
5 the pilot reimbursement issue and the rate reset. Our
6 contracts provided that for the period that -- I guess I'll
7 step back for a second.

8 There was a new joint pilot agreement which we had
9 talked about in the first-day declaration, and Your Honor may
10 remember that, that was entered into for the pilots that
11 involve all three of the airlines, Mesaba and Pinnacle and
12 Colgan, where they were all under one joint pilot agreement.
13 We call it the JCPA. So -- JCBA. So what happened with that
14 agreement is and that process is that because we were going to
15 have an integration where we bought Mesaba, we were now going
16 to go ahead and integrate Mesaba into the Pinnacle process, and
17 we were going to try to go from three certificate holders,
18 three different airlines, into two certificates at the time, we
19 knew that there'd be a period of time for that integration;
20 there'd be some training that was related to it. And as part
21 of the bargaining when Pinnacle bought the stock of Mesaba,
22 there was an agreement and an amendment made to the contracts
23 that allowed for there to be a one-year look-back from the time
24 that the collective bargaining agreement was approved and took
25 effect until a year later, to allow for some reimbursement of

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1 additional costs that related to those items.

2 There's a very extensive formula that's set forth in
3 the contract, in particular the CRJ-200 contract on this point.
4 And what happened -- what would have happened with respect to
5 that is, that under the terms of that agreement, we were
6 obligated, at the end of the year, to provide Delta with data
7 on what the amount was that we were entitled to under that --
8 we believed we were entitled to under that contract.

9 The contract period for the year look-back ended
10 February 17th, 2012. On February 27th, we submitted
11 calculations to Delta. Under the terms of our contract with
12 Delta, it's very clear that what has to happen is the parties
13 are obligated to negotiate in good faith. And we are talking
14 about one year's worth of data that somebody has to go through
15 and analyze, as well as all the formula calculations. And then
16 if the parties have negotiations and they can't reach an
17 agreement, there is a provision that goes to what we're
18 affectionately calling baseball arbitration.

19 We're either in front of one arbitrator, or if we
20 can't agree on that, we each pick one, and we get a third. So
21 we have three arbitrators. And then they either pick our
22 calculation or Delta's calculation. And that's what the
23 contract provides.

24 So there's been a lot of publicity, including in
25 people's statements, in the pleadings that people have filed,

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1 in things that have been put in the press, about how somehow
2 Delta didn't make a payment to us when they were supposed to.
3 Well, that's not true. We had this dispute that finally --
4 this provision in our contract. We gave them data. We didn't
5 agree on the data. We negotiated. Delta felt that the number
6 was more like sixteen to eighteen million dollars. And there
7 was reasons for that. There was a difference in the contract
8 interpretation language of the provision on whether there is --
9 it was governed by a pay parity agreement. There was issues
10 about the calculation of the numbers and how much was due to
11 actual training versus flight instructors or productivity
12 issues and whether that was reimbursable. So we had a dispute.
13 That also got resolved in the mix.

14 And then we had the provision that there is a rate
15 reset that was provided for under the contract. So when we
16 were negotiating the contracts with Delta, not surprisingly,
17 Delta said when they were negotiating the rates they wanted to
18 remove that rate reset. We obviously negotiated on the rates,
19 and we ended up at rates that are in certain cases higher than
20 our existing rates were prior to the contract, but they are
21 dealt with in different ways from a commercial perspective.

22 So we had these disputes. As part of the deal to get
23 a DIP we had to try to settle and resolve those. Depending on
24 how those ultimately came out, really, the pilot reimbursement
25 payment we're talking about, whether it was sixteen or eighteen

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1 or forty-four million dollars, we either owed Delta, maybe even
2 as much as twenty million dollars, or Delta owed us money, also
3 maybe something like fifteen million dollars. So we resolved
4 it at zero pre-bankruptcy, as a setoff. Because our choices
5 were -- and this goes to the best interests of the estate -- is
6 that we had a package that the board -- now I'm going to go
7 back to what the board was thinking. We had this package.
8 We'd negotiated this for a month. And this was the best we
9 could get to.

10 We got some good things, some not so good things in
11 our contract, we didn't get everything we wanted, they didn't
12 get everything we (sic) wanted. We negotiated on our offsets.
13 It was a condition upon them that we sign new CBAs before the
14 filing, that we get the DIP commitment and that we resolve all
15 these disputes, because we were going to be seeking to assume
16 the contracts. We did that. That was what our choice was.

17 So the board then had to decide, did it want to sign
18 on to that deal? Was that in the best interests of all
19 stakeholders? And what was the alternative? So the board did
20 consider alternatives. The board looked at a liquidation.
21 Obviously not a better situation, I'm sure, as Your Honor
22 understands, for the creditors, particularly many of the
23 creditors here who are -- either are employees who would like
24 to have jobs, people who sell to the company, provide key
25 parts, et cetera. So not in the best interests of all

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1 stakeholders; and not economically better.

2 We then had the choice of do we go naked? Do we file
3 Chapter 11 and we don't have a DIP, and we know we have sixty
4 days of cash? Does the board do that or does the board take
5 the collective overall deal? So the board weighed that. And
6 it weighed it for days. It was not one meeting where we had
7 this conversation, Your Honor. As someone who's in all those
8 board meetings, I can say that. It was very serious where we
9 were having negotiations with Delta, and then the board would
10 tell us if we could get X, Y, or Z, then maybe they would be
11 comfortable with this. We'd go back to negotiating with Delta;
12 we'd make some progress on some of those issues; we'd come back
13 and have another discussion with the board. And at the end of
14 the day, the board really weighed the options.

15 And because of what we had been told by Delta, which
16 was don't count on us being there on the other side for you for
17 a DIP, and if we are, the terms will be worse; we also knew we
18 hadn't been able to find anyone else. We'd shopped this for
19 months. We had Mr. Shapiro, who's a fabulous investment
20 banker, helping us out. And he couldn't find us money. And he
21 couldn't find us money for lots of good reasons, because as I
22 said, this isn't a particularly attractive DIP for someone who
23 doesn't have an interest in the outcome of this organization,
24 from a pure DIP economic perspective.

25 So the board did really consider what was in the best

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1 interests of the estate. And what about this deal the board
2 felt was comfortable is, a) it gives the company sufficient
3 cash to run these Chapter 11 cases, to enable us to negotiate
4 the cost savings that are necessary for this company to
5 reorganize. And that honestly would have been true whether we
6 had changed our contracts or not changed our contracts, because
7 we have a lot of issues which I think were outlined in both Mr.
8 Spanjers' first-day declaration and Mr. Menke's declaration,
9 about what led us here. And it wasn't Delta who caused our
10 liquidity crisis. It was four other major problems that we had
11 in our business that did not just happen overnight. And we're
12 sitting here having to decide, is something going to change in
13 the sixty days that we're in proceedings, where we're going to
14 magically find the DIP lender; where we're going to be able to
15 negotiate better terms with Delta? Are our commercial
16 agreement terms going to be better? Is Delta all of a sudden
17 going to tell us, oh no, you don't need to renegotiate those;
18 we'll just give you the DIP at that rate?

19 Your Honor, we considered all that, and we determined
20 that to preserve the estate, to have it have a chance to
21 reorganize with the exit financing and the DIP, the board felt
22 that this was in the best interests of stakeholders to move
23 forward with the package versus the alternative. So I think
24 that answers why we thought it was in the best interests of the
25 estate, from our perspective. So I'm going to pause there

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1 before I go on to the next part, the terms were appropriate.

2 All right. Then I'll talk about the terms. I will
3 say to you that we -- the economics, I've addressed.

4 THE COURT: Pause, please, Ms. Beckerman. My
5 principal concerns on the terms -- subject to your opponents
6 being heard, they're modest -- are constraints on the debtors'
7 exercise of its fiduciary duties and constraints upon me,
8 mainly in the area of making sure that labor and management
9 work cooperatively. Put your emphasis there.

10 MS. BECKERMAN: I will. Okay, Your Honor. So why
11 don't we start with the labor issues, just -- maybe that's just
12 the first thing to start with.

13 It's not uncommon, as Your Honor knows, for there to
14 be provisions in the DIP that either get at these issues
15 directly or indirectly. I will put it that way, because that
16 is the way I think of it as a bankruptcy attorney. What I mean
17 by indirectly is, you have an entity that's very labor-
18 intensive and has unionized workforce and has a situation where
19 there are issues about whether they need to have labor cost
20 savings and other cost savings in a bankruptcy. That probably
21 accounts for many cases that come before this Court, and
22 probably just about every airline that's ever filed for Chapter
23 11.

24 So what does the DIP do in that circumstance? The DIP
25 either has a provision that just says you have to get your

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1 costs down by a certain amount, which we have in ours, which is
2 October. DIPs sometimes also have specific milestones related
3 to the 1113 process, because those are very significant parts
4 of our costs, and in many other cases, those as well. And that
5 does not mean when those milestones are in the DIP that the
6 debtor doesn't have to fully comply with the 1113 process in
7 order to, if it were going to file a motion and seek relief,
8 satisfy you that we've done so, which means negotiating in good
9 faith, providing the union with the appropriate information,
10 having a back and forth, trying to reach an agreement, and then
11 filing the motion if we are unable to do so, seeking to explain
12 to the Court why we need the relief and seek these changes in
13 the contract and why we ask for them; which we would be doing
14 here.

15 The timing on it. The creditors' committee was very
16 concerned that we did not have enough time in our original
17 milestones to allow for there to be a consensual resolution.
18 So one of the changes that the creditors' committee negotiated
19 in the timeline was that our date by which a motion had to be
20 filed got pushed back by almost a month, by twenty-three days,
21 to enable people to get more time. And I think that was based
22 on their discussions, in part, with the unions.

23 THE COURT: This is the deadline for the initial
24 filing of any 1113 motion?

25 MS. BECKERMAN: Correct. And that is now July 13th.

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1 We filed Chapter 11 on April 1st. We delivered proposals to
2 the unions on May 8th. That would mean that we would have had
3 two months of negotiation to try to reach a deal.

4 As Your Honor knows from many other cases that are
5 pending and from what the statute says is required, the time
6 frame for the ability to commence an action after you make a
7 proposal, obviously, in the statute is much shorter. And in
8 many other cases, including ones going on in this district
9 right now, such as American or others, there isn't necessarily
10 the same exact timing. We felt that this was negotiated out
11 with Delta. It's obvious that the committee was negotiating it
12 with Delta as well. And we came up with this date that was
13 extended, that gives more time for a consensual resolution,

14 Then the next date. The next date is the 1113
15 decision deadline. Your Honor is quite right that the statute
16 obviously allows for leeway for that extended, and the initial
17 time period for that is obviously relatively short. But we are
18 talking about ninety days from the filing of the motion. And
19 if the motion is filed July 13th, we are talking about a date
20 that would obviously be October, before we'd be at a situation
21 where we needed a decision. And that would be approximately
22 six months from the time we filed Chapter 11. And our labor
23 costs make up more than fifty percent of our costs in this case
24 and are obviously one of the more significant issues that have
25 to be addressed.

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1 And we obviously have a DIP that matures in a year
2 from our filing date. And we have to have a plan confirmation
3 process. And we have to go effective. And so there isn't --
4 if Your Honor looks at all the deadlines, I don't really -- our
5 viewpoint is that this is not very tight compared to what the
6 statute requires or in not giving enough time for the Court to
7 determine the decision in giving you ninety days from the time
8 we file the motion.

9 THE COURT: Pause, please, Ms. Beckerman. I don't
10 know all the facts. And I haven't talked to Judge Lane about
11 this. And I would think before I did -- although I might
12 ultimately come to the view that there's no problem in it --
13 but I have heard triple anecdotally that in the middle of an
14 ongoing 1113 process, Judge Lane thought that a mediation might
15 be constructive, and he either encouraged the parties to do
16 that and they agreed or he directed it, and I'm not sure which.
17 You or the others can help me understand that in my own mind.

18 If I were to come to the view that mediation is
19 helpful in the middle of an 1113 process, even with having
20 started taking testimony and the like, to what degree is there
21 any impediment to my making such a decision?

22 MS. BECKERMAN: Well, I don't think there's --

23 THE COURT: Or any conditions on that or limits on my
24 ability to do that?

25 MS. BECKERMAN: I think the practical answer to that,

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1 which I'm sure Your Honor knows, is that there wouldn't be any
2 limits on your doing that. We have a covenant with the DIP
3 lender that says we have to have a decision by a certain date
4 or we have a default. Now, obviously, as Your Honor knows,
5 sometimes that's done, as I said, in other ways that are even
6 indirect with cash -- we also have a cash covenant where we
7 have to get certain cost savings by that date.

8 The answer would be that we'd obviously have to go
9 back to our lender if it was going to extend further than that,
10 and ask for permission to extend that issue if there was going
11 to be a good-faith determination by the Court. Right now,
12 that's what would happen under our agreement. I don't think it
13 precludes you from sending it to mediation, but it obviously
14 does put a time limit on needing a decision.

15 THE COURT: Yes, well let me tell you what's bothering
16 me, partly because I'm interested in the welfare of this case,
17 and partly because I'm interested in the welfare of all the
18 other eleven cases in my docket, some of which are even bigger
19 than this one.

20 In Lyondell Chemical, people tried to put the same gun
21 to my head on one of the milestones, and they wanted me, if I
22 recall correctly, to issue some decision right in the middle of
23 the Christmas season on a very important issue, an issue that
24 was of great importance to both the debtor and the lenders --
25 or the debtors' unsecured creditors and the lenders. And I

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1 thought it was too tight. And I think, in fact, it was in the
2 context of a final DIP, just like this.

3 And sometimes I have to be the heavy and say that I'm
4 too squeezed on it. Should I be talking to you or should I be
5 talking to Delta about this?

6 MS. BECKERMAN: Well, Your Honor, I think you're going
7 to have to -- we're going to have to talk to Delta about it.
8 But why don't I at least try to address some of the other
9 issues I know that were raised with the 1113 as well --

10 THE COURT: Okay.

11 MS. BECKERMAN: -- which I think was your question
12 about the reasonableness issues. We obviously have a number of
13 milestones that have reasonableness provisions. So I don't
14 think the plan having to be reasonably acceptable to the
15 lenders when we file it is unusual. We've obviously provided
16 you with tremendous amounts of precedent on that. And Your
17 Honor said it yourself, it's not unusual. Mr. Shapiro's
18 declaration also says in the many DIPs he's done, it's not
19 unusual either.

20 We have a provision for the plan as confirmed having
21 to be reasonably acceptable. Also, I think, not unusual in a
22 circumstance like this, particularly where we don't -- we
23 obviously don't -- we have a secured creditor going in and
24 lending more money and wanting to be clear they're either going
25 to get paid off or have some treatment that's acceptable to

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1 them at the end of the day. Not very unusual for a DIP lender.

2 The 1113 milestones provide that the settlement, if
3 there is a settlement in the negotiations, does have to be
4 reasonably acceptable to the lender, again, governed by
5 "reasonably". And if there's --

6 THE COURT: And I have the power to decide reasonable?

7 MS. BECKERMAN: Well, Your Honor, you always have the
8 determination to figure out if the settlement is reasonable, so
9 I think that the lender would have a hard time, obviously,
10 arguing if you approved a settlement that it wasn't reasonable.
11 But I'll let Mr. Seligman address that one when we get to him.
12 And --

13 THE COURT: Yes, you're in the traditional mode of a
14 debtor who's caught in the middle. And I well understand that.
15 We won't be done until I hear from Mr. Seligman.

16 MS. BECKERMAN: Oh, I understand that. But I just
17 want to make sure I've addressed -- I do understand that. And
18 I'm sure Mr. Seligman, who's been the debtor's counsel many
19 times in other cases understands that, sitting in court.

20 THE COURT: Okay.

21 MS. BECKERMAN: But why don't I just finish. I'm not
22 sure if there were other terms that you were concerned about
23 the reasonableness. But I do think we have addressed them in
24 our papers about -- for example, we've talked about the
25 reasonableness standard. We've talked about why we have

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1 financial covenants which I think are fairly standard. And our
2 financial covenants are very standard here. There's a cash
3 covenant, there's a budget variance, and there's an overall
4 cost-saving covenant, which is not unusual, particularly in a
5 case that is going to be going through a process where the
6 company needs cost savings.

7 I think that we've tried to provide for, timing-wise,
8 reasonable dates for some of these other milestones. For
9 example, our plan filing deadline is 30 days after the 1113 or
10 the date which is 225 days from the time we filed for a Chapter
11 11. And that -- then when you add on our 90 days for
12 confirmation, we're already at 315 days in this proceeding,
13 when we have 365 days of usage under the DIP. So --

14 THE COURT: I heard the 365 days of use on the DIP.
15 What was the number of days that you're already at after the
16 miles --

17 MS. BECKERMAN: If we file a plan, our plan milestone
18 finding is 225 days into the case, which is obviously well
19 beyond --

20 THE COURT: 225 days to the filing of a plan?

21 MS. BECKERMAN: Right.

22 THE COURT: As compared and contrasted to confirmation
23 of the plan, of course.

24 MS. BECKERMAN: Confirmation is another 90 days; 315
25 days in total. And we have to emerge -- and no one would ever

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1 put these dates out with no slippage, Your Honor. I'm sure, as
2 you understand, having been in practice for a long time before
3 you went on the bench -- so I don't think we feel that these
4 deadlines are tight. Some people have complained about that.
5 We don't feel that our covenants are too tight. We have
6 obviously negotiated that with the assistance of our financial
7 advisor, the debtors' management and their business, based on
8 their business plan.

9 We're obviously comfortable that we should be able to
10 satisfy and meet these covenants and that they're reasonable,
11 and the types of covenants are customary. I don't -- I guess
12 we should probably talk about the roll-up.

13 THE COURT: Pause, please, before you get to the roll-
14 up. You're here, of course, as conflicts counsel for reasons I
15 well understand and for which I'm very comfortable. But when
16 you move away from your dealings with Delta into case
17 management as a whole, you have co-counsel, who I assume is
18 going to be carrying the ball on confirmation, and presumably
19 drafting a plan. Have you coordinated with your co-counsel,
20 Davis Polk, to make sure that you're not putting them into a
21 pickle?

22 MS. BECKERMAN: Yes, Your Honor, we have.

23 THE COURT: And they're okay with the timelines that
24 you've been putting before me --

25 MS. BECKERMAN: Mr. Huebner is here. I'm sure he can

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1 speak for himself.

2 THE COURT: Yes, he's out in shallower right field. I
3 see him.

4 MS. BECKERMAN: Okay. Yes, we've coordinated very
5 carefully in this case, Your Honor. I guess that's one of the
6 ironic things about having spent two years fighting with each
7 other in Delta. We obviously do know each other pretty well.
8 And having both decided to work on this assignment together, we
9 have worked very closely together, obviously within the bounds
10 of our conflict issues. But we have coordinated on issues like
11 that.

12 THE COURT: Okay. Keep going.

13 MS. BECKERMAN: Okay. So then we should probably talk
14 about the roll-up, because I think that's obviously drawn some
15 commentary. Your Honor, we had looked at the collateral
16 package for the pre-petition debt for Delta, and it obviously
17 was made up of two flight simulators, some other equipment, and
18 the Mesaba stock, which obviously, in our bankruptcy situation,
19 you'd have to sort of focus on the hard assets, probably, for.
20 But it also has the right of setoffs under the promissory note.
21 And those, as well as the contracts, pre-amendment, also
22 included very broad setoff rights across contracts, and
23 including with the Mesaba note.

24 So when we were analyzing the collateral here and the
25 amount of the debt, we looked at forty-four million dollars of

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1 debt, we looked at the fact that at any point in our Chapter 11
2 timeline, whenever we would commence Chapter 11, there is
3 always some substantial amount that would come due relating to
4 pre-petition flying that wouldn't be due and payable until
5 post-petition. So in other words, Delta would have monies that
6 they would owe that related to the pre-petition period, because
7 they pay us in arrears under our contract. So for example, if
8 we fly through the end of the month, our second half of the
9 month flying doesn't get paid till the fifteenth day or the
10 sixteenth day, depending on whether it falls a weekday or not,
11 the next month.

12 So at any time, there's always an amount of money that
13 we are owed from Delta that's not insignificant. Here, when we
14 filed, the amount -- and we obviously, from the first-day
15 declarations, Your Honor is aware that we had a reason we had
16 to file at the beginning of April, which was we were going to
17 run out of money completely by April 13th if we didn't. And
18 that was in Mr. Menke's declaration as well as Mr. Shapiro's
19 declaration.

20 So when we knew we were going to -- we had a sense
21 that we were going to try to file around then; we'd obviously
22 looked at the amount that we were talking about. And the
23 amount that Delta has -- that they would have owed us from the
24 pre-petition flying was about twenty-nine million dollars, Your
25 Honor. So at any given point in time, when we were looking at

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1 this, we were looking at the flight simulator, the equipment,
2 and the twenty-nine million dollars. And I think we got
3 comfortable, from our perspective, from the debtors'
4 perspective, that that meant that this loan was fully secured,
5 largely due to the setoff issue, but because of the setoff
6 issue; and that our order follows the local rules, which
7 allows, obviously, for the creditors' committee or other
8 parties to challenge that and to seek disgorgement. Obviously
9 Delta is a creditworthy party for any disgorgement if that were
10 to ultimately be ordered. And we couldn't get the DIP without
11 the roll-up. Plain and simple, it was a condition that Delta
12 absolutely insisted on.

13 We did not put out our -- my first term sheet did not
14 have a roll-up in it. I'm sure you would understand that. But
15 we had a lot of negotiation. This was --

16 THE COURT: Pause, again, please. If you didn't have
17 the roll-up, as I sense your first term sheet contemplated, how
18 would you have dealt with the priming issues associated with an
19 alternative -- with the loan without -- it would be --

20 MS. BECKERMAN: Well, with --

21 THE COURT: -- presumably it would be Delta priming
22 itself.

23 MS. BECKERMAN: Right.

24 THE COURT: But did the issue of priming come up with
25 any of your alternative DIP lenders?

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1 MS. BECKERMAN: No, because they were aware that we
2 didn't think we could possibly prime Delta under the
3 circumstances or it would be a big fight. And I don't think
4 anybody we were talking about with alternatives was looking at
5 the priming fight. Since we never --

6 THE COURT: So they would lend on a junior lien?

7 MS. BECKERMAN: They would lend on the unencumbered
8 collateral and on a junior lien on anything that they could get
9 a junior lien on. That is exactly what the collateral
10 package -- and you have to also understand that there's some
11 things that we can't lien. And so maybe I should cover those,
12 because they're very clearly covered in our order. We actually
13 ended up adding a lot of language at the request of the
14 aircraft -- various aircraft finance parties.

15 But as you understand, under 1110, we will have a
16 deadline coming up very shortly -- it's May 30th -- that we
17 have to make decisions on whether we're going to have an
18 1110(a) election, whether we're going to ultimately have some
19 kind of 1110(b) stipulation that puts out that and has some
20 terms for a short time period so we have more time to
21 negotiate --

22 THE COURT: I need to interrupt you again.

23 MS. BECKERMAN: Sure.

24 THE COURT: Because I don't know 1110 as well as I
25 know other provisions of the Code. Under 1110, does a debtor

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1 have the option of meeting its current obligations to its
2 aircraft lessors without either assuming or rejecting?

3 MS. BECKERMAN: Yes. It does. But it's what I was
4 referring to as 1110(a). So what it means is most debtors,
5 including us with respect to some of our aircraft -- most of
6 our aircraft -- have made the election during the first sixty
7 days, which is the time period you have for making the decision
8 not to actually pay what you owe during those sixty days. And
9 in some cases there could be amounts that would be owed
10 otherwise pre-petition as well. Not -- we were current, but it
11 could happen. So that's one thing.

12 And the debtor has really three options under 1110.
13 One is 1110(a) which says I'm going to cure everything I owe --
14 cure all defaults, both monetary and nonmonetary under my
15 agreement; and I'm going to perform on my agreement going
16 forward. It's not an assumption, but it is a performance
17 obligation, which is what you're asking --

18 THE COURT: Why would a debtor ever want to do that?

19 MS. BECKERMAN: Sometimes, Your Honor, it can't
20 negotiate better terms with the lessor. It tries. It's an
21 important aircraft. The lessor has something else it could
22 sell it for, for more money. Your rates are good. You can't
23 really do better. I mean, there's a lot of reasons, from my
24 experience in other aircraft, why sometimes people 1110(a)
25 aircraft.

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1 THE COURT: I would have assumed, though, that the
2 sweet spot is the stay current going forward, and keep your
3 options open.

4 MS. BECKERMAN: Well, you wouldn't assume -- that's
5 1110(a), Your Honor. Cure arrearages, stay current, and your
6 options are open about assumption and rejection.

7 1110(b) is you go to the aircraft finance party; you
8 negotiate some other interim deal with them, which says I know
9 you have this sixty-day deadline. You don't want to -- either
10 because you don't think their rates are appropriate, you
11 negotiate other terms for the interim while you have time to
12 negotiate a long-term deal. There's a lot of things that go
13 into an 1110(b) mix, from my experience being both committee
14 counsel to airlines and a debtors' counsel to Hawaiian, for
15 example. And so that's one option.

16 If you don't do either 1110 or 1110(b) -- and that has
17 to be with the agreement of the party, 1110(b), and that
18 doesn't constitute an assumption or a rejection either. It's
19 just you agree we're going to do whatever we negotiated, and
20 that's going to satisfy me, and meanwhile I'm not going to make
21 you return the aircraft. If you do neither, the stay is lifted
22 under the Code, and someone can come repossess your aircraft or
23 take it back.

24 So this is why that deadline is very important. And
25 so what I was trying to explain in the context of the DIP,

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1 which I'll go back to, is we can't -- under our agreements,
2 which is very standard with our aircraft lessors and also our
3 aircraft financiers, more importantly -- and when I say
4 "aircraft", that also includes spare parts for aircraft,
5 because spare parts are covered by 1110 as well -- we can't put
6 liens on -- junior liens or any liens on their assets, because
7 we have negative pledge provisions. In the case of our parts
8 facility, we are modifying it in an 1110(a), in other words,
9 staying current, and we can't cure a default if we allow
10 someone to have a lien on it that's a default, and we can't
11 cure that; so that's not possible.

12 And so that even took out more collateral that we
13 could possibly have to pledge in these circumstances, because
14 obviously we can't give someone a junior lien on those assets
15 for that reason, for example, on our spare parts.

16 So you were asking me what someone was going to do
17 when they're looking at this. You know, that made -- that is
18 why it's hard to find a lender in this situation, Your Honor,
19 because we don't have a lot of collateral; there's some
20 collateral we can't give them junior liens on, because we can't
21 operate otherwise. Our parts will go away; our aircraft will
22 go away; we don't have a business. So that's where we were
23 with respect to that.

24 So I think when we were discussing this, we didn't
25 really have a lot of issues about priming, because I don't

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1 think people thought they wanted to have a priming fight with
2 Delta, and I think they understood they couldn't get 1110
3 assets. So that just meant that people had to decide they were
4 lending on the cash flow operations of the company and the
5 unencumbered collateral that they can get under this DIP, which
6 is primarily Saab aircraft as well as some ground handling
7 equipment and some other miscellaneous equipment and systems.

8 So I hope that explains to you why it was challenging.

9 THE COURT: Yes, thank you.

10 MS. BECKERMAN: So getting back to the reasonableness,
11 there was a lot of issues that were raised by parties. I think
12 I addressed the timing on the plan process. I think I
13 addressed the 1113 timing, subject to Mr. Seligman. I'm just
14 putting that in. The reasonableness point we talked about. I
15 mentioned, I've already put on the record for purposes with the
16 unions that we are obviously going to have to fully comply if
17 we go down the 1113 process with the 1113 requirements. So I
18 don't look at anything in this DIP as in any way affecting
19 that, in the sense of what we'd have to do on the debtors' side
20 for that.

21 There was a complaint about the change-of-control
22 provision. As you know, that's pretty typical in DIPs. We
23 have obviously provided you with authority for that, both from
24 Mr. Shapiro and our chart.

25 Cross defaults. Interesting issue. Not uncommon to

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1 have cross defaults with major contracts. In other words, if
2 you default under a major contract, your DIP goes into default.
3 That is in a lot of DIPs, depending on what's a major contract.
4 In Delta and United, there were cross defaults like these where
5 the parties had related agreements, and so they were all cross
6 defaulted. And pre-petition, before we amended any of our
7 flying agreements, we already had cross defaults between all
8 our flying agreements and the promissory note. So the only
9 change that we're doing here is obviously adding the DIP into
10 the mix. And that's obviously replacing and refinancing the
11 Mesaba note, which was already cross defaulted.

12 I guess we were talking about the rollup. Sorry. So
13 maybe I should just go back to that for a second. We've cited
14 to you, obviously, cases that support the basis for approving a
15 DIP with a rollup. We've explained to you what our -- I
16 explained to you what our viewpoint was on the setoff rights.
17 We also had the unique thing that the debtor was clearly --
18 that we couldn't get the DIP without agreeing to the rollup.

19 As I said to you, I did not start with a rollup. But
20 I got comfortable recommending it to the board, which I did,
21 for a number of reasons; the first being the collateral/setoff
22 analysis I did; the second being that it is subject to review
23 and challenge by appropriate parties, including Mr. Miller
24 sitting over there. And the other issue which I raised in my
25 papers and I called the "creeping rollup", is that even if we

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1 hadn't done this, we would have ended up with a large
2 percentage of this happening anyway through the setoff rights.

3 So let's just say I had managed to convince Mr.
4 Seligman that we would assume these contracts but we would not
5 roll up the DIP -- which I wasn't able to do, but let's just
6 say I had been able to convince him of that and Delta was
7 willing to do that -- what would have happened is, the same
8 amount I mentioned to you before, that was a pre-petition
9 amount that came due and owing, they would have gone to this
10 Court, sought permission to set off against the Mesaba note,
11 which is a pre-petition obligation, and -- by all the same
12 parties, where the contract is clear that that's permissible --
13 and our view was that that would have happened anyway. That's
14 twenty-nine million of the forty-four.

15 So our viewpoint was, we would have ultimately had
16 creeping rollup. Then we would have had an issue of what
17 happens to the rest. If we assume these contracts and then all
18 of our obligations are kind of -- have to be cured and are
19 fungible, will we have seen further setoff arguments from Delta
20 coming, again, through this Court, potentially? But would that
21 have even made that number bigger?

22 So I think we got comfortable that with all those
23 issues with respect to the rollup, that there was really not a
24 harm here for the company, and because of the safeguards that
25 we have in this DIP that protect it, and because we were

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1 comfortable recommending, based on the setoff rights that we
2 thought that this was a fully secured piece of paper.

3 And we couldn't obtain credit on some other terms. I
4 think you've heard enough about why we couldn't get
5 administrative credit or superpriority credit or credit from
6 anybody else on any terms different than these. So I don't
7 think there's really a question about what we're asking for
8 with liens, et cetera.

9 I don't know if there was anything else you wanted me
10 to specifically address. I thought I could address, if you
11 wanted, because there was a lot of argument about it, about why
12 this is a sub rosa plan; why this is overreaching.

13 THE COURT: Why don't you save that for reply if you
14 need to address it at all.

15 MS. BECKERMAN: Okay. All right. I guess -- did you
16 want to hear from Mr. Seligman next?

17 THE COURT: Yes. Mr. Seligman, come on up.

18 MR. SELIGMAN: Good morning, Your Honor.

19 THE COURT: Mr. Seligman, my concern, one that I
20 assume you share at least in substantial part, is while I
21 happily want your client's money, I want to keep my debtor
22 healthy. And as a judge with institutional concerns, and in a
23 case where I would have to be blind not to notice that labor
24 peace is a very important issue in this case, and that I don't
25 want labor and management killing each other while the debtor's

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1 on the operating table, I want to have the maximum flexibility
2 I can to help people reach a consensual deal. I want to keep
3 the limits on my discretion in helping people stay friendly to
4 be minimized. I think I said that right. I want the limits on
5 my ability to do my job minimized. And I want to know the
6 downside, if any, if I were to give a conditional approval, as
7 I did in Lyondell, saying I'm going to suck it up, agree to the
8 milestones, but I absolutely need an extra -- I forgot what I
9 asked for in Lyondell -- maybe thirty days, to help the 1113
10 process or the alternatives to reach a more consensual
11 resolution.

12 MR. SELIGMAN: Your Honor, I appreciate and totally
13 hear your comments. Let me just maybe just take a step back
14 and give you some context for how we perceived these
15 milestones, because that just may give you some context from
16 where we're coming from and our perspective. And certainly,
17 Delta, having gone through its own Chapter 11, having gone
18 through its own 1113 process, is sensitive to the labor issues.

19 Delta was willing to provide a one-year DIP. And so
20 when people were wanting to design some milestones, it was with
21 the intention to keep the debtors moving along in its
22 restructuring efforts so that it could hit that one-year
23 deadline. And as a matter of fact, when we were in the process
24 of discussing these milestones, it was just at that time that
25 the DIP in Hostess was approved, and we actually modeled our

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1 milestones based upon the approved milestones in the Hostess
2 case with respect to plan filing and 1113.

3 And so when we looked at it and we realized that there
4 was going to be twelve months here, we kind of worked backwards
5 from there and we realized there has to be some -- basically
6 three phases. There has to be an initial period for the debtor
7 to develop its business plan, because that's going to be the
8 formula -- the basis for it to even make its 1113 proposals.
9 So there was deadlines associated with that. We figured then
10 the next stage was the 1113 process by which it obtains, either
11 through litigation or hopefully a consensual resolution,
12 whatever labor modifications it feels it needs. And then would
13 be the plan process, by which it -- once it has those savings,
14 it was going to turn to the plan process. And that was all
15 geared -- and as Ms. Beckerman mentioned, it was all geared to
16 try and hit that twelve-month period.

17 And if you actually look at the dates, assuming that
18 people take the maximum time under those milestones, you get
19 to -- assuming that it's the type of confirmation plus a two-
20 week stay period -- you get to March 1st, 2013. So that leaves
21 you one month --

22 THE COURT: I thought the milestone went to
23 confirmation, it didn't go to effective date?

24 MR. SELIGMAN: It did not. But assuming --

25 THE COURT: Then why did you mention the two-week stay

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1 period?

2 MR. SELIGMAN: I just mentioned that because you're
3 right, it could be waived; but I just -- you're right that the
4 last milestone is February 15th, basically, for plan
5 confirmation. But we assumed --

6 THE COURT: Entry of a confirmation order?

7 MR. SELIGMAN: Entry of a confirmation order. So we
8 just budgeted that if there was going to be a stay, and then a
9 little bit of -- we figured thirty days flexibility to hit the
10 one-month period. So that was the context in which we were
11 discussing these milestones. It wasn't trying to twist
12 anybody's arm. But we wanted to keep people on pace to hit the
13 twelve-month period. That was the --

14 THE COURT: If I read the -- if I read the deadline as
15 I think you explained to me and as Ms. Beckerman explained to
16 me, as going to entry of a confirmation order, that two weeks
17 that you had provided for, for the post-confirmation entry
18 stay, is an extra two weeks that I can play with in helping
19 people reach peace, isn't it?

20 MR. SELIGMAN: It may be, Your Honor. And I guess
21 what I would say in response to your comments is, is that
22 certainly if we get to that -- I think it's -- working from the
23 dates, about October 13th for the period for an 1113 order to
24 be entered, I'm certainly telling you on behalf of Delta, that
25 if Your Honor says I need an extra couple of weeks or a month

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1 or whatever, to enter my ruling, we're not going to have a
2 problem with that. What was important for us was that we do
3 have the November 15th plan filing deadline to at least get the
4 plan process started, and if that's the way it works, that's
5 the way it works.

6 THE COURT: I appreciate that, Mr. Seligman. Because
7 while I'm perfectly happy to allow parties to put guns to their
8 heads, I'm less generous when the gun's aimed at mine.

9 MR. SELIGMAN: Sure. So I can certainly say that on
10 behalf of -- that we're going to be flexible with that at --
11 obviously, we have the one year. And that's why we worked
12 backwards from the plan filing deadline. And maybe it turns
13 out that the -- if Your Honor says you need an extra two weeks
14 or whatever it may be, there's a shorter period of time between
15 the implementation of that and the plan filing deadline. But
16 there are obviously other milestones and other pieces to the
17 whole pie. But we're not going to hold up on that issue.

18 THE COURT: You're explaining to me that there is an
19 orderly progression, and that inevitably one step along the
20 chain has the potential, at least, to affect others further
21 down the chain.

22 MR. SELIGMAN: Exactly, Your Honor.

23 THE COURT: I hear you. Were there other questions
24 that I said I thought I might want to ask you instead of Ms.
25 Beckerman at the time? I was mainly listening to her, and I

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1 didn't write them down in my notes.

2 MR. SELIGMAN: I think the other issue that you raised
3 was the question about there are certain things that have to be
4 reasonably acceptable to Delta. And certainly, Your Honor,
5 you're the arbiter of that. And if there are disputes, we
6 will -- I'm sure we'll be coming to Your Honor on those
7 questions.

8 THE COURT: All right. Thank you.

9 Okay. I would like to hear from you, Mr. Miller, and
10 then we've gone a long time without a break. We'll take five
11 minutes or ten minutes after you're done.

12 MR. MILLER: Thank you, Your Honor. Brett Miller,
13 Morrison & Foerster on behalf of the creditors' committee, and
14 I will be brief.

15 At the outset of the case, when the committee was
16 formed, the committee had a number of issues with the proposed
17 DIP financing, and asked both Delta and the debtors for an
18 adjournment, and they graciously agreed. We said they didn't
19 need the money. They agreed that the money was more of a June
20 time frame need for the debtor. And we used the several weeks
21 to negotiate with both the debtors and Delta.

22 The negotiations covered the DIP order as well as the
23 Delta agreements. The committee is comprised of experienced
24 players in the airline/aircraft field. We raised a number of
25 issues regarding the Delta agreements, regarding specific

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1 issues that Ms. Beckerman said the debtor had asked for and
2 Delta had denied. We continued to press Delta on a number of
3 those issues and were successful in making changes to the Delta
4 agreements, which are referenced in the revised documents.

5 Additionally, with regard to the order, we were able
6 to expand the milestones, extend out the time, add in an
7 extended period of challenge for the committee as well as
8 standing for the committee to bring any actions, if, during the
9 challenge period, it finds that there's something that should
10 be brought by the estate which the committee would be suing
11 for.

12 This is not a typical DIP. This is not a typical DIP
13 lender. But when you take it apart piece by piece as Ms.
14 Beckerman just did during her presentation, and look
15 specifically at the Farmland factors, I believe that it was an
16 exercise of sound business judgment and in the best interests
17 of the estate. On that point, I think it's important to note
18 the difference between the creditors' committee and perhaps the
19 objectors is the creditors' committee was looking at this as
20 having no backup plan. The creditors' committee went out
21 during the extension, during the adjourn period, and spoke with
22 a number of DIP lenders. We had meetings with these potential
23 DIP lenders. We got at least one to enter into a new
24 confidentiality agreement, nondisclosure agreement with the
25 debtors. We went back to some of the parties who the debtors

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1 had spoken to prior to filing.

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2 And we came back with the same result. There was no
3 one interested in providing alternative financing for this
4 company. And we were met with the option of playing chicken,
5 essentially, with Delta, and objecting to the DIP, and hoping
6 that Your Honor denied the DIP and perhaps Delta opened up
7 negotiations and gave a better proposal. But if they didn't,
8 we were faced with a probable liquidation of the company in the
9 short term, because there are liquidity concerns that kick in
10 in the next couple of weeks, and without financing, and without
11 an alternative financing source, there's really no plan B here.

12 And there's no soft landing in airline liquidations.

13 I've represented committees in certain other airline
14 liquidations, and it's not pretty. And as the committee
15 represents unions, employees, suppliers, creditors, we opted
16 for what we think is the most sound decision here, which is to
17 go forward with this DIP financing, with Delta as the partner,
18 and hopefully Your Honor will approve the DIP under the terms,
19 as modified during the adjourn period by the committee.

20 THE COURT: Okay.

21 MR. MILLER: Thank you.

22 THE COURT: Thank you. Folks, we'll take ten minutes,
23 and then I'll hear from the objectors. We're in recess.

24 (Recess from 11:37 a.m. until 11:47 a.m.)

25 THE COURT: Okay. Let's continue.

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1 MR. JONAS: Your Honor, Jeff Jonas of Brown Rudnick
2 for a number of shareholders holding approximately ten percent
3 of the debtors' stock. Your Honor, if it's okay with the
4 Court, what I'd like to do -- and I'll try and keep my entire
5 presentation brief -- but what I'd like to do is first make
6 some general comments and remarks, and then, if I could, I will
7 specifically address the Court's questions.

8 Your Honor, this is not a typical or customary DIP.
9 It is extraordinary in any number of regards, some of which
10 I'll highlight now, and some of which I hope we'll have the
11 opportunity to put on through the evidence. Your Honor, the
12 Court should not approve the DIP motion because it represents a
13 perversion of the bankruptcy process in that the DIP lender,
14 Delta, is taking advantage of the debtors in every way
15 possible, and using the DIP: first, to force prematurely the
16 favorable settlement of pre- and post-petition claims against
17 both the debtors and against itself, including obtaining for
18 itself a broad release; second, it's using the DIP to strong-
19 arm the immediate assumption of key contracts between the
20 debtors and Delta, which were amended literally minutes before
21 the bankruptcy was filed, apparently in an effort to avoid
22 bankruptcy court review of those amendments.

23 The debtors admit, Your Honor, that these amendments
24 were beneficial to Delta and economically disadvantageous to
25 the debtors. Shockingly, Your Honor, the debtors also admit

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1 that these contracts, on a net basis, are money losers for the
2 debtor. Query the last time, Your Honor, that the Court
3 approved a debtor's assumption of admittedly money-losing
4 contracts.

5 And third, Your Honor, Delta is using the DIP to take
6 control of the cases, in effect, a sub rosa plan, including,
7 pursuant to the contract amendments and the assumptions and
8 other events promulgated in the first days of the bankruptcy
9 cases, Delta will be the debtors' sole customer; Delta will be
10 the debtors' sole lessor of planes; and Delta will be the sole
11 source of financing. All of these arrangements will be cross
12 defaulted, and the cases will blow up if the debtors default in
13 any regard under any of those arrangements, also, Your Honor,
14 pursuant to covenants in the DIP including minimum cash
15 requirements, budget compliance, change-of-control limitations,
16 all of which restrict the debtors' ability to both operate and
17 reorganize.

18 Also, Your Honor, pursuant to the tight milestones
19 built into the DIP requiring the debtors, among other things,
20 to modify their collective bargaining agreements or reject them
21 and to file a plan of reorganization which must be approved by
22 Delta, again, all going to the effect of Delta taking control
23 of these cases.

24 Your Honor, the Court shouldn't approve the DIP
25 motion, because the standard for approval, which we agree on --

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1 that is, Farmland as cited in our papers -- can't be met. And,
2 Your Honor, as you've already pointed out, Farmland stands for
3 much more than the business judgment of the debtors as
4 highlighted by the debtors so far. And I just think it's worth
5 repeating, Your Honor, as the Court knows the standard, first
6 the proposed financing has to be an exercise of sound and
7 reasonable business judgment. Second, the financing is in the
8 best interests of the estate and its creditors. Third the
9 transaction is necessary to preserve the assets of the estate,
10 and is necessary, essential, and appropriate for the continued
11 operation of the debtors' business. Fourth, the terms of the
12 transaction are fair, reasonable, and adequate, given the
13 circumstances of the debtor-borrower and the proposed lender.
14 And fifth, the financing was negotiated in good faith and at
15 arm's length, by the debtor on the one hand and the lender on
16 the other.

17 Here, Your Honor, each of the foregoing tests, based
18 on the evidence, is in doubt, because of the debtors' desperate
19 situation, lack of options, absolute dependence on Delta, all
20 of which were fostered by purposeful harmful actions taken by
21 Delta, frankly calling into question whether the arrangement
22 was negotiated in good faith and at arm's length, and because
23 of the unfair and unreasonable terms obtained by Delta.

24 Your Honor, as stated in the Mid-State Raceway case,
25 323 B.R. 40, 59 (Bankr. N.D.N.Y. 2005), the court said,

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1 "Bankruptcy courts do not allow terms in financing arrangements
2 that convert the bankruptcy process from one designed to
3 benefit all creditors to one designed for the unwarranted
4 benefit of the post-petition lender."

5 Your Honor, the Court will hear much about the
6 debtors' alleged desperate need for the DIP financing and the
7 fact that the process to obtain the financing was allegedly
8 fair. But desperate need and fair process are not enough to
9 overcome the Farmland approval standards and/or the
10 admonishment of Mid-State Raceway.

11 Your Honor, I'd like to address -- because I think you
12 were spot-on with a number of your questions, I'd like to
13 address those. We wish we had a clear alternative to the DIP.
14 We don't. But because it's the only game in town doesn't make
15 it right, and it doesn't automatically mean that the Farmland
16 factors are met. If that were the case, Your Honor, a DIP
17 lender in that situation might as well charge a hundred percent
18 interest, take over the entire case, take all the collateral,
19 et cetera, et cetera. That's not the standard.

20 The standard is whether the factors are met. I
21 appreciate whether there's an alternative or the lack of
22 alternative and the impact that might have on the case -- I
23 appreciate that that's relevant. But it's not the be-all and
24 end-all. That is, notwithstanding that as I stand here, I
25 can't tell you there's an alternative source of financing.

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1 That doesn't mean that the Court is compelled to approve this
2 DIP, if this DIP, as we believe it does, doesn't pass muster.

3 Your Honor, we also believe that through the testimony
4 you'll hear today -- and we hope we'll have an opportunity to
5 put the evidence on, Your honor, you'll see that the dire
6 projection -- and this goes to --

7 THE COURT: Did you notify my chambers of an intention
8 to be putting on live witnesses?

9 MR. JONAS: Your Honor, we've -- I haven't
10 communicated with chambers. We've had numerous discussions
11 with the debtors.

12 THE COURT: Doesn't my case management order require
13 exactly that?

14 MR. JONAS: Your Honor, my apologies, Your Honor, if
15 that's the case. We anticipated that the debtors had put the
16 declarations on and we'd have an opportunity -- we've conducted
17 depositions yesterday, and we thought we'd have an opportunity
18 for some brief cross-examination today.

19 THE COURT: I'm going to have to think about that, Mr.
20 Jonas. You're talking about materially extending the duration
21 of a hearing, when the debtor has some very tight time frames
22 here, and where my case management order -- and I won't say
23 you're the only one who disregarded it in proceedings before
24 today, but this is one of the most important things -- is
25 intended to avoid exactly this kind of a situation.

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1 You better make the remainder of your argument, and
2 I'll think about whether I have material issues of fact after
3 your opponents have had a chance to be heard and reply and the
4 other objectors have had a chance to be heard.

5 MR. JONAS: Understood, Your Honor.

6 And again, I'd point out just a few facts. I'll take
7 the opportunity now just to point out a few facts, some of
8 which I've already highlighted, that I think are absolutely
9 critical, and I think do not come through, if you will, in the
10 presentation that's been delivered today. And those are the
11 following, Your Honor. And I'll just highlight the key facts.
12 And frankly, I'm not sure they're -- at this point, based on
13 the fact that I think they are within the testimony based on
14 the depositions over the last forty-eight hours -- I'm not sure
15 the debtor will even dispute them, Your Honor.

16 THE COURT: Well, if you have representations to me as
17 to what the depositions showed or if you have transcripts to
18 hand up to me, subject to your opponents' rights to be heard, I
19 wouldn't necessary conclude that they have the same infirmities
20 as to your desire to put on live witnesses.

21 MR. JONAS: Understood, Your Honor. And again, my
22 apologies if we haven't complied with the case management
23 order. I will say, Your Honor -- and it doesn't excuse it by
24 any means -- I will say, Your Honor, we've had a lot of
25 discussion with the debtors over the last -- and the committee

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1 and others over the last few days, and frankly, I think at
2 least the parties, Your Honor -- again no excuse -- but at
3 least the parties' anticipation was that in fact, we would have
4 testimony today. That's why we were doing what we were doing,
5 if you will, leading up till today's hearing. Again, that's on
6 me, Your Honor, and I accept that responsibility with respect
7 to the case management order.

8 But I just wanted the Court to be aware that the
9 parties have been proceeding -- unfortunately, the most
10 important person in the case is you and you weren't under the
11 same perception, but at least the parties' perception was that
12 that's how we would proceed today.

13 Your Honor, as I said, I've highlighted some of the
14 facts, but I'll just come back to those, because I think
15 there's really two or three absolute key facts. Number one, we
16 believe that both witnesses that we've heard from, that is,
17 we've deposed over the last forty-eight hours, three witnesses,
18 Your Honor: the two declarants, the debtors' two declarants,
19 Mr. Menke and Mr. Spanjers; and also Mr. Shapiro, the FA in the
20 case.

21 And both of the debtors' employees, I believe their
22 testimony supports the fact that certainly on a net basis, the
23 two contracts in this case, which were -- if you look at the
24 amendments in the documents before the Court, Your Honor,
25 you'll see they're dated the same date the case was filed. And

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1 the testimony supports the fact that they were working around
2 the clock and literally got the amendments done, if not
3 minutes, hours or days prior to the bankruptcy filing.

4 And those amendments, Your Honor, to the critical
5 contracts between the debtors and Delta, make these
6 contracts -- or as they now stand, as amended, which was done
7 shortly before the case -- money-losing contracts. Again,
8 there was a difference in testimony from the two employees, but
9 on -- there's no doubt that on a net basis, these are money-
10 losing contracts that they are asking you to assume today as
11 part, if you will, of the DIP arrangement.

12 I think that's unheard of, Your Honor. If our facts
13 are right, I'd be hard-pressed, I think, to find a case where a
14 court has approved assumption of contracts which are admittedly
15 money-losing contracts.

16 Now, what they'll say, Your Honor, is well, they may
17 be money-losers today, but through the concessions we hope to
18 obtain from labor, then they will no longer be money-losing
19 contracts. That's all well and good, Your Honor. But the fact
20 of the matter is, I don't think the Court can presuppose what's
21 going to happen with labor or otherwise. I think the fact of
22 the matter is, if, in fact, these are money-losing contracts, I
23 think the Court should find itself hard-pressed to approve
24 assumption today, as part of the DIP arrangement.

25 And I don't think -- by the way, Your Honor, my own

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1 view is that's a very critical fact that -- and I'm not
2 suggesting anything untoward, but if you read the declarations,
3 nowhere would you find any sort of testimony, if you will, as
4 to the economics of those contracts, which I think is
5 critically important.

6 Second, Your Honor, the -- and this fact, if you will,
7 I think ties into one of your main concerns, which is, I think
8 you said you don't want to have a gun to your head. Your
9 Honor, I can assure you that if you approve this DIP today, you
10 do have a gun to your head. Because what it does is puts you
11 in a straightjacket, because it ties -- one of the milestones
12 is approval, not only of labor concessions, but those are all
13 pre-baked. The amendments that were done the day this case
14 filed, or the day before this case filed, the rates that are
15 contained in those amendments, require, if you will, certain
16 concessions from labor.

17 So I'm not sure what this negotiation is going to look
18 like, Your Honor, because the debtor must obtain certain, if
19 you will, predetermined concessions. And if they don't get
20 those, they have to come to you and they have to seek to reject
21 those contracts, and they have to do that on a timeline. And
22 if they don't do that, this case blows up. There's defaults
23 under the DIP; it gives the DIP lender rights. Effectively,
24 it's the end of the story. The case is over.

25 So I think, Your Honor, that goes directly to your

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1 concern. It's a valid concern. And I think it does put you in
2 a very small box, which is not where you should be, if you, in
3 fact, approve the DIP.

4 Your Honor, another fact --

5 THE COURT: You can get me out of the box if you -- if
6 either your clients or anybody they know will give me thirty
7 million bucks of new money.

8 MR. JONAS: Your Honor, I absolutely appreciate that.
9 And as I said, I wish very much -- and I can assure you, we
10 thought of that. And I knew I'd be standing before you today,
11 and I would have liked nothing better than to have been here
12 with a DIP. We're not. We don't have that today. But I keep
13 coming back to -- and I'm sorry to belabor it -- but I don't
14 think that's the standard. I don't think the fact that there's
15 no alternative means that what -- if that were the case, Your
16 Honor, that whatever they put before you, because there's no
17 alternative, you have to approve, I don't think that can
18 possibly be the standard.

19 And it's not. Because Farmland lays out a standard.
20 The standard is either met or it's not. And if it's not, you
21 can't approve this arrangement. And for the reasons we've
22 already identified, and for some more I'm going to give you in
23 a minute, I don't think you can approve this DIP. I'm sorry
24 about that. I know it's very bad for the case, and I
25 appreciate that. But my clients felt it was not appropriate to

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1 roll over, if you will, and just accept what was deemed to be
2 or viewed to be an extraordinary, improper arrangement.

3 THE COURT: Well, forgive me for pursuing this, but if
4 this case craters and it liquidates, not just equity -- which
5 may or may not be in the money at this point, I don't know --
6 but three or four different creditor classes senior to equity
7 are going to go down with the Titanic: workers, vendors,
8 hopefully there aren't as many tort litigants as I've had in
9 other cases, but those as well. That's a lot of people to be
10 putting at risk of a liquidation to improve the deal when we
11 have no known alternative.

12 MR. JONAS: Your Honor, I think the point, though,
13 is -- and I'm sensing the Court's -- perhaps it's frustration
14 that the Court's in a tough position, which is if I don't
15 approve this, there's a lot of folks that are going to feel a
16 lot of pain. And I appreciate that. But that's not your job.
17 The job was for the debtors to get it right, to come before you
18 with a DIP that passes muster. They haven't.

19 So while you may be sympathetic, or empathetic, and I
20 appreciate that, as am I, it's not our job to just take
21 whatever's stuffed down our throats because there's no
22 alternative. Again, Your Honor, I keep coming back; if that's
23 the ration -- that can't be the rationale. Because then,
24 first, as you do anyway, I think, you have every debtor who
25 cries it's a melting iceberg; I'm running out of cash -- and

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1 I'm going to get to that in a minute, Your Honor, because I'm
2 not so sure that's the case here, or at least not as presented.

3 You have that all the time anyway. You'd have it in
4 spades. And then you'd have the DIP lender coming in, grabbing
5 everything and anything, and just say, well that's it. We
6 could do whatever we want. There's no alternative; so that's
7 what you're going to take. And I just don't think that's the
8 case, Your Honor. Again, I share your concern, but I think
9 it's incumbent on the debtor, on the DIP lender, in this case,
10 to get it right.

11 Your Honor, the other factual issue I wanted to come
12 back to, which is tied to this, if you will, is this issue
13 about the debtors running out of cash, and it's going to happen
14 on June 1st or sometime in June; it's coming upon us. Again,
15 no choice, got to do this.

16 Your Honor, I believe that the testimony we elicited
17 through the depositions demonstrates that, in fact -- and I
18 believe it's Mr. Menke's declaration -- was incomplete.
19 Because the analysis that was done, and there's a budget
20 attached to Mr. Menke's declaration -- and by the way, Your
21 Honor, I'm not disparaging Mr. Menke. He seems like a lovely
22 gentleman. I'm sure he's doing the best he can. But the
23 testimony that was elicited shows that the budget, to get to
24 the point that they run out of cash in June, assumes that
25 Delta's going to exercise their setoff right.

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1 And that may be fine. It may not be, Your Honor. But
2 even if I accept the assumption, the analysis was that well, we
3 owe them money, and they owe us money under the contract, so
4 that gets you to a ten million dollar number. And lo and
5 behold, if you look in June, Your Honor, you'll see the cash is
6 at something like ten million dollars. And if they exercise
7 the setoff, it gets down to zero, we're out of cash.

8 But what it doesn't do, Your Honor, is if -- it's in
9 our papers, but if we had an opportunity -- and we, by the way,
10 have no affirmative witnesses, Your Honor. We think we could
11 prove our case solely through brief cross-examinations of the
12 debtors' witnesses -- what we think we can show Your Honor is
13 that that analysis, if you will, didn't include multiple other
14 claims running -- in this case, running that the debtor had
15 against Delta, that would, if not reduce, possibly eliminate
16 that setoff right; such that our view is that there was a
17 conclusion, which is, okay, we need a budget to support the
18 DIP, we need to show we're running out of cash, and that was
19 reached, but it was reached in a faulty manner.

20 Because the full story isn't baked into the numbers.
21 Only two numbers were looked at, not the full story, which
22 is -- and you see from our papers, Your Honor, and you heard, I
23 think from some of the presentations that were already made,
24 yeah, there were a lot of claims running back and forth. I
25 think Ms. Beckerman referred to, well, in connection with

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1 assumption of those contracts, even though it was done out of
2 your purview a day before the bankruptcy case, they were trying
3 to deal with cure issues.

4 And there were claims running back and forth. But my
5 point, Your Honor, is when they did a budget and they put in a
6 declaration to support running out of cash, they didn't tell
7 the full story. And if the full story is told, we believe,
8 Your Honor, it would change that interpretation and maybe,
9 maybe change the story on when the debtor runs out of cash.
10 And I haven't -- we can't look -- from the outside looking in,
11 Your Honor, we can't run that analysis, so it's hard for us to
12 do, but I think at least, Your Honor, my point is, the full
13 story should be told, if nothing else. And then the Court can
14 make a determination as to the efficacy of those facts and
15 whether or not they support, in this case, approval of the DIP.

16 Your Honor, I won't belabor this. I think I've really
17 only highlighted a few facts. I hope the facts that I
18 presented are uncontestable, so perhaps we don't even need the
19 testimony. I don't know. But again, the point is, Your Honor,
20 this is truly extraordinary. It's not just a DIP. It's a DIP;
21 it's approval of amend -- it's assumption of contracts that
22 were amended literally minutes before the bankruptcy filing, so
23 that they could be amended outside the Court's purview, in our
24 opinion; it's approval of a setoff and mutual release agreement
25 that was executed minutes before this bankruptcy filing, again,

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1 outside of this Court's purview.

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2 I'd urge the Court to ask the question: why were
3 those done? Why did -- and by the way, Your Honor, the debtor
4 tells us they adamantly opposed that. Well, to no avail. Why?
5 Because it's another theme we would present, Your Honor. The
6 debtor had no options. The only game in town for the debtor
7 was Delta. So they did what Delta told them to do. They did
8 their bidding.

9 You want to amend contracts a minute before we file?
10 Sure. Does it matter that those contracts are economically
11 disadvantageous to us? Well, we don't really have a choice, so
12 we'll take that deal. You want to sign up a mutual setoff and
13 release agreement a minute before we file bankruptcy? Sure,
14 we'll do that. You want to put us under tight milestones and
15 basically presuppose or predetermine how labor's going to be
16 treated in this case? Sure.

17 And you might ask yourself, Your Honor, why does Delta
18 care about -- why are they trying to put you in a box and deal
19 with labor in the fashion they have? The reason is, Your
20 Honor, because under the contracts -- at least under the pre-
21 amended contracts -- and this was innate -- this was a dispute
22 between the debtors and Delta -- but nevertheless, the debtors'
23 position under those contracts before they were amended -- the
24 debtors' position was that Delta was responsible for increased
25 labor costs. Well, Delta didn't like that. Delta would like

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1 to not have to be responsible for those increased labor costs.

2 So effectively, what has happened here? They took
3 advantage of the debtor, who was very easily taken advantage of
4 in light of their situation. They amended the contracts,
5 number one. And now, to get the contracts to be profitable for
6 the debtor, the debtor has to obtain certain labor concessions.
7 And if they don't obtain them, they must get a rejection from
8 the Court.

9 So it all fits together, Your Honor. But the way it
10 fits together is that Delta basically has control of this
11 process. They continue to control this process. And I don't
12 think -- based on what we've already presented, I don't think
13 the Farmland standards are met, and I don't think that the
14 Court can or should approve the DIP arrangement today. Thank
15 you, Your Honor.

16 THE COURT: Thank you. Okay. Next, who wants to be
17 heard next?

18 MR. MORRIS: This is Ryan Morris. May I go next, Your
19 Honor?

20 THE COURT: Yes, Mr. Morris. Go ahead.

21 MR. MORRIS: Yes, thank you for allowing me to speak
22 here, Your Honor. I'm a pro se objector; I'm not a lawyer.

23 THE COURT: Although I noticed your papers, they sure
24 walked and talked and quacked a lot like papers I get from
25 lawyers.

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1 MR. MORRIS: I have a lot of --

2 THE COURT: Did you, like, drop out of law school or
3 go to law school or get some help from a lawyer on them?

4 MR. MORRIS: I had help from a fellow amateur lawyer
5 who's another equity holder here. But no, I'm not a lawyer.
6 My background, I'm an engineer is to do your programming does
7 need work in the law, and this is a hierarchy and everything,
8 but I --

9 THE COURT: Yeah, I got an engineering degree too, but
10 I thought I'd go on to law school. Go ahead.

11 MR. MORRIS: I mean, everything -- I agree with
12 everything that Brown Rudnick just said, and so I won't
13 duplicate anything they said, but perhaps I could offer a bit
14 of, you know, some different additional perspective here.

15 Certainly twelve months ago, the debtor was describing
16 in the conference call I attached to my filing, describing a
17 picture of the company, in particular, what the 2013 resets
18 would allow them to earn in potential profit on their CRJ-200,
19 which is, I think is a plane for Delta. And now despite record
20 profitability for Delta, we find ourselves in a bankruptcy
21 court where they're arguing the equity substantially out of the
22 money.

23 And if you look to the root cause for why we're here,
24 I think it's fairly clear that the reason is when Pinnacle
25 acquired Mesaba in 2010, about two years ago, from Delta after

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1 they acquired Northwest, which acquired Mesaba several years
2 before, and what choice did they have in that matter? And I
3 don't know if there's any testimony in this from Brown Rudnick,
4 because they're fairly new employees, but my understanding from
5 trying to farm ways is that there really was very little choice
6 to say no to this.

7 And it seems that now that Delta's finance, their gift
8 has sort of turned out to be a Trojan horse to extract
9 tremendous value for Delta. I'm not saying that it was
10 intended that way, but frankly, I suspect Delta feels somewhat
11 justified in this extraction, because I'm not sure if you're
12 aware, but the reason why Pinnacle has so much value is due to
13 a 300 million roughly unsecured claim against the former
14 bankrupt customer they had, Northwest, which was sold for cash
15 in the market in 2007, but ultimately Delta acquired that. So
16 in some sense, Delta effectively paid that claim indirectly
17 through acquiring Northwest.

18 So and to be honest, I mean, Delta, they have
19 positioned themselves and maneuvered over the last two years,
20 brilliantly. I mean, that's not sarcastic at all. I mean,
21 it's really an amazing job that their lawyers and their
22 businesspeople have done to position their new strength in this
23 consolidated industry. And so as I look at it, over the last
24 in two years, and sort of every move that they've made, it led
25 to some sort of, frankly, inevitable outcome here. I mean,

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1 just looking and going back to the alternatives that you have,
2 and obviously we don't have an alternative DIP loan at the
3 moment, and I doubt anything would come, I would posit to you
4 that frankly, I think we need your help here for the
5 negotiating side of it, in the sense that, if you look at the
6 side of the debtors, or the board and the management -- and
7 this is no -- I'm not calling them conflicted in any sense, but
8 frankly the way they behave, it's as if they're Delta
9 employees. And I think it's because they frankly haven't had
10 much of a choice.

11 It's not been necessarily out of anything nefarious,
12 but I mean, just to be thinking at a social level, this is a
13 fairly tight industry, the airline industry. You know, these
14 regionals are generally stepping stones for people to go to the
15 big carriers where you make substantially more money. It's not
16 exactly an industry that produces a lot of independently
17 wealthy individuals that can just act out of their own -- you
18 know, what they think is right. And so they just -- Delta had
19 a lot of power over the individuals that frankly wouldn't allow
20 them to really stand up for something they believed in.

21 I mean, obviously some people have left, perhaps out
22 of that issue, that have -- just have strong personal ethics
23 and strong beliefs. So in terms of an alternative, I would
24 certainly posit that I don't think Delta is going to have a
25 feeder for I think at least a billion dollars of their own

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1 revenue disappear overnight over an issue of thirty million
2 dollars. So that -- I mean, I don't personally -- I don't
3 really know exactly the mechanisms for this, but they won't --
4 the debtor won't be able to get that kind of a concession
5 without the help of some kind of external party, because
6 otherwise they're frankly, they're branding themselves in an
7 industry, especially with some individuals in their early
8 forties, that have a long career ahead of them, and if they get
9 branded for being very difficult people to work with, then
10 that's just an impossible position for that individual to be
11 in.

12 But I think it's very clear. I mean, Sean Menke made
13 a declaration to the employees on May 3rd. I'm not sure if
14 that was filed or not. But there was a quote, in early
15 January, Delta notified us that they were not participating in
16 restructuring outside of bankruptcy. And for Delta that's
17 standard protocol. By steering this process towards basically
18 what was an inevitable bankruptcy back in January, requiring
19 everything to be court-approved, they get this huge benefit of
20 washing their hands of all the liability of all the prior
21 actions that led up to that. And I believe that's part of this
22 DIP loan.

23 So I certainly appreciate the position -- the
24 difficult position they're in and I think that's what we were
25 really hoping to be able to get some more light on. And

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1 unfortunately as you know, the trustee at least at the moment
2 has denied an equity committee, so we can't see any of the
3 things that have all been filed under seal, so we really can't
4 make much of a determination. I'm certainly interested in
5 getting Brown Rudnick's testimony that they collected. I don't
6 have the resources to do that, at the moment.

7 THE COURT: Pause, please, Mr. Morris. Apropos that,
8 have you restricted yourself? Restricted in the sense of
9 agreeing not to trade in securities of the debtor?

10 MR. MORRIS: I believe I did in the letter that we
11 sent to the trustee. I certainly don't intend to. I filed a
12 13(d), and I wouldn't do that, no. If I'm not restricted, I'm
13 restricting myself right now on this call.

14 THE COURT: Your holdings had reached the level that
15 under the Williams Act you had to file a 13(d)?

16 MR. MORRIS: It was as a group, actually. So I own
17 below five percent, just under five, but I had formed a group
18 with another shareholder. We had attempted to get a couple
19 board seats on -- basically to help to prevent a bankruptcy
20 filing, because again, there was nobody on the board that we
21 believed could really stand up to Delta because of their own
22 future career issues that it would have raised. And so we
23 attempted to -- Wayne King and I attempted to engage with
24 debtor back in February and we spoke with -- you know, spoke
25 with them. And we had continued to some degree dialoging. The

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1 date that they were supposed to respond, we were in our
2 meeting, they indicated we were likely to be welcomed onto the
3 board; they responded by delaying the end of the meeting and
4 then filing bankruptcy shortly thereafter.

5 I mean, frankly, I'm just confused by their behavior.
6 I mean, I don't understand -- I mean, I sort of understand both
7 the conflicts that they have from a career point of view, but I
8 just don't understand what their upside is as to being so one-
9 sided with Delta. I mean, even Don Breeding, the chairman, he
10 called me back several weeks ago saying we're not going to
11 object to the equity committee, we're going to be neutral on
12 that issue, and then of course, a week and a half later,
13 there's these extreme objections from the debtor. So it's odd
14 behavior. And I, honestly again, I don't know exactly the
15 mechanisms, but some kind of examination has to dig it up.
16 Because we, right now, as equity, have no idea what's going on,
17 because everything has been filed under seal.

18 THE COURT: Okay. You want to get back to any final
19 thoughts you have on the wisdom or lack of wisdom of the DIP?

20 MR. MORRIS: Yeah. So I just -- on the DIP in terms
21 of -- and I certainly understand your position, them not having
22 an alternative, but I think the DIP as it is, particularly with
23 the contract amendments that were basically the most valuable
24 assets that the debtor had, which was to give eight percent
25 margin, publicly disclosed -- although that's now been redacted

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1 in the new form, this seventy million dollars of EBIT roughly
2 over roughly five years, starting next year, the fact that that
3 was given away as part of the thirty-five million or forty-
4 million DIP, probably makes this the highest return on an
5 investment of anything in the airline industry ever. And it's
6 certainly not fair terms. But they really couldn't stand up
7 for themselves. And frankly, I doubt Delta is going to let
8 this -- risk it going through a liquidation, because the cost
9 to them of losing over a billion of revenues of these feeder
10 flights, I don't think that they would get into that game of
11 chicken. But I also think the debtor is, for these sort of, I
12 say nonlegal social reasons, unable to stand up for itself, and
13 so I think that's hopefully the role that you can help play
14 here. I'm not exactly sure the mechanism, again, but I defer
15 to you and Brown Rudnick on that. Thank you, Your Honor.

16 THE COURT: All right. Thank you.

17 Okay, Mr. Kolko, did you want to be heard?

18 MR. KOLKO: Sure. Thank you, Judge. Hanan Kolko,
19 H-A-N-A-N, last name K-O-L-K-O, on behalf of the steel workers.
20 Your Honor, I will be brief.

21 In light of the modifications to the DIP agreement
22 which the debtors and the committee negotiated after we filed
23 our objections, we are withdrawing our objections. And I want
24 to just make two brief points.

25 First of all, we will reserve our rights at the

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1 appropriate point to object on the basis that debtors have not
2 complied with the procedural and substantive requirements of
3 1113, if we get there.

4 Second of all, picking up on a point that Your Honor
5 made, you said that you were anxious for there to be
6 constructive labor negotiations and that you were willing to
7 help the parties in that process. And on behalf of the steel
8 workers, we welcome that. In the negotiations, an issue which
9 we think will loom large, is the extent to which these aren't
10 bilateral negotiations, that is, it's not going to merely be
11 negotiations between the debtors and the unions, but they will
12 be multilateral negotiations, where the unions, at least the
13 steel workers, are likely to be seeking things from parties
14 other than the debtors, and in particular, Delta.

15 There's been a lot of talk about the amended DCAs. It
16 is our view --

17 THE COURT: Pause, please, Mr. Kolko. You haven't sat
18 through other hearings with me. I go nuts with acronyms,
19 because I don't live with my cases the way the parties do. I
20 think DCA stands for, what, Delta Connection agreements?

21 MR. KOLKO: Yes, Judge.

22 THE COURT: Would you indulge me -- actually it's in
23 my case management order, so it's more than indulging me, it's
24 complying with a court order. If you want to talk about the
25 UAW, I understand that that's auto workers, and I know what the

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1 FCC is and I know what the U.S. is. But minimize the acronyms
2 if you would, please, Mr. Kolko.

3 MR. KOLKO: Sure. I apologize, Judge. Is it okay if
4 I now refer to them as the amended DCAs?

5 THE COURT: You're over the dam on that one, so you
6 can go on.

7 MR. KOLKO: Okay. And I will make every effort --

8 THE COURT: Dam is a double entendre in this context.

9 MR. KOLKO: I apologize, Judge. Back to the point.
10 We may be coming to both Delta and Your Honor and say the
11 amended DCAs, as they stand now, require the debtor to obtain
12 way too drastic labor cost concessions. And it may be that in
13 connection with reaching a consensual resolution of the labor
14 issues, that we will be seeking from Delta and ultimately from
15 Your Honor, changes to those agreements, so that debtors can
16 operate profitably with the level of labor cost savings that
17 can, in fact, be achieved during this process. And we're just
18 flagging that issue now, so that nobody can claim to have been
19 blindsided when it comes up in earnest during the negotiation
20 and 1113 process.

21 THE COURT: Okay.

22 MR. KOLKO: Thank you, Judge.

23 THE COURT: Thank you sir.

24 Mr. Seltzer, is it?

25 MR. SELTZER: Yes, thank you.

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1 THE COURT: Come on up, please.

2 MR. SELTZER: Richard Seltzer, of Cohen, Weiss and
3 Simon for the Air Line Pilots' Association, also known as ALPA.
4 I may have the distinction of being the shortest speaker today,
5 Your Honor.

6 We appreciate your comments about wanting to retain
7 discretion to do whatever you can to help encourage a
8 consensual resolution. As our papers stated, ALPA reserves its
9 rights. And we appreciate also the comments of counsel for the
10 company and Delta, confirming that the obligations of the
11 company under 1113, to the extent we get there, and we hope we
12 don't get there frankly, are not changed or modified in any way
13 by the proposed DIP order. Thank you.

14 THE COURT: Okay. Thank you.

15 Anybody else before I give Ms. Beckerman or any of her
16 colleagues a chance to reply? Mr. Huebner, are you rising to
17 be heard?

18 MR. HUEBNER: I am, Your Honor.

19 THE COURT: Sure.

20 MR. HUEBNER: For the record, Your Honor, I'm Marshall
21 Huebner of Davis, Polk & Wardwell, on behalf of Pinnacle. I'm
22 not, obviously, participating in the Delta hearing, but Mr.
23 Morris went a little bit far afield in some of the things that
24 he said, that were really related to other matters. And so I
25 just want the record to be very clear --

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1 THE COURT: Sure. Just pause, Mr. Huebner. You tend
2 sometimes to be a little soft spoken, so could you pull that
3 mic close to you?

4 MR. HUEBNER: Yes. I apologize, Your Honor. Just to
5 be very clear, the dialog with the U.S. Trustee about the
6 formation of an equity committee, which was denied by the U.S.
7 Trustee's Office, as was previously alluded to, was based on a
8 detailed set of facts presented to the U.S. Trustee, including,
9 among other things, that the equity holders, in fact, had made
10 substantial post-filing acquisition of additional shares at
11 pennies on the dollar. So your question about did the equity
12 holders offer to get restricted; did they ever, for example,
13 ask for information or ask to sign a confidentiality agreement;
14 the answer to those questions, among other things, are no.

15 And maybe Mr. King or Mr. Morris are under the
16 misimpression that one has to have official status in order to
17 seek information. That obviously is not true. We have very
18 different views about many of the things he said. I will leave
19 aside for right now the utterly unsupported repeated
20 accusations about breach of fiduciary duty and the fact that
21 people were shilling for future jobs in the airline industry,
22 and so the entire board and all of management did not do what
23 they were supposed to to protect the company. Those
24 accusations, suffice it to say, are things which with we
25 extraordinarily, strongly disagree, and as to which there's

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1 absolutely no basis in the record.

2 In fact, at the risk of getting heat when they see the
3 transcript, I think if you looked at the seniority and average
4 age of the board members, you would probably laugh out loud at
5 the accusation that what they're really looking for is a future
6 job in the airline industry.

7 THE COURT: Okay. Thank you.

8 Ms. Beckerman?

9 MS. BECKERMAN: I think Mr. Jonas had something he
10 wanted to --

11 MR. JONAS: If I may, Your Honor?

12 MS. BECKERMAN: -- rise on before I got --

13 MR. JONAS: I'll just --

14 MS. BECKERMAN: -- to my reply.

15 THE COURT: Sure. Come on up, please, Mr. Jonas.

16 MR. JONAS: Your Honor, Ms. Beckerman's been kind
17 enough to give me one minute. I just wanted to apologize to
18 the Court, because I think -- I take seriously your case
19 management orders, and obviously I misinterpreted them, because
20 I just want the Court to appreciate that when I read it and I
21 saw in Section 2 --

22 THE COURT: Give me a second, I have it here
23 somewhere.

24 MR. JONAS: Sure. And I'm not challenging you, Your
25 Honor, by no means. I'm really just somewhat apologetic,

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1 because I'm a bit embarrassed. I'm sorry, it's Section 3 on
2 page -- it begins on page 2.

3 THE COURT: You better read it to me.

4 MR. JONAS: Sure.

5 THE COURT: I thought I brought it out here, but I
6 can't find it.

7 MR. JONAS: Sure. Your Honor, this is case management
8 order number 1 in the Pinnacle case. And paragraph 3 on page 2
9 says, "The initial hearing on all Motions in Contested Matters
10 will be nonevidentiary," I agree, "unless," and then sub (c)
11 says -- and these are ors, Your Honor, (a), (b), (c) or (d) --
12 (c) says, "the Motion is of a type specified in Local
13 Bankruptcy Rule 9014-2(b), (c), (d), or (e)." So when I looked
14 at --

15 THE COURT: Okay. And this is one of those that's --

16 MR. JONAS: Yes, it is, Your Honor.

17 THE COURT: -- encompassed within the cross reference?

18 MR. JONAS: Yes, it is.

19 THE COURT: Okay. Thank you.

20 MR. JONAS: So if I'm mistaken, I certainly apologize,
21 Your Honor.

22 THE COURT: Fair enough. Okay. Ms. Beckerman?

23 MS. BECKERMAN: Your Honor, I'm going to try to
24 address some of Mr. Jonas' and other arguments, to respond to
25 them in order. The first I'm going to start with is our cash

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1 needs.

2 We've obviously filed an amended commitment letter and
3 attached that as a budget. And the budget shows that we need
4 to draw ten million dollars on June 1st. And the reason that
5 we need to draw ten million dollars on June 1st is that we have
6 a view of management that we cannot safely operate this airline
7 with less than twenty million dollars of cash, which is in Mr.
8 Menke's first-day declaration.

9 And therefore, if we didn't have the draws on the DIP
10 that are scheduled for June under this budget, we would be at,
11 at the end of June, eleven million dollars. And that does not
12 take into account the intermonth -- interweek swings that we
13 have, because we have, as we discussed before when I was
14 addressing you previously, under the contracts we have a lot of
15 payments that go back and forth under our agreements between
16 ourselves and Delta. And also that's true for some of our
17 other capacity purchase agreements that are winding down as
18 well.

19 And so what happens -- but primarily Delta -- and what
20 happens is, at certain points when we have payroll or other
21 items that come due, our cash dips and then it rebounds later
22 in the week when payments come in. We have swings that are as
23 much as twenty million dollars, which is in Mr. Menke's
24 declaration as well. There are serious interweek swings.

25 We can't operate this airline without that. We're not

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1 standing here asking you to borrow money for a DIP that we
2 don't need. And we're not saying that we need it on June 1st
3 because we don't. We need it. So that's why we're here.

4 The second thing that was addressed was the issue
5 about the contracts. So I wanted to discuss that. If Mr.
6 Menke -- I mentioned before the discussions that went back and
7 forth in negotiations between the parties for a month, and
8 including issues about the rates; and that not surprisingly,
9 one of the things that Delta had proposed was lower rates, and
10 we obviously negotiated the rates up.

11 Well, part of that was because we did an analysis
12 ourselves of a couple of things on the debtors' side. The
13 first thing is, we did an analysis of what -- an extensive
14 analysis of benchmarking all of our labor costs. And that
15 included our pay rates; it included our benefits; it included
16 our work rules. And in the context of doing that analysis and
17 trying to figure out for our negotiations whether we could come
18 up with a workable business plan on the rates, we had to
19 consider that.

20 And we did consider that in connection with that. And
21 not surprisingly, Your Honor -- I'm sure we'll have a lot more
22 discussion about that if unfortunately, if we ever get to 1113;
23 hopefully we won't -- but there are obviously issues with the
24 debtors' costs not being in line with what is the band of
25 what's average in our area, in our competitors. And we have

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1 very serious problems relating to our pilot agreement. No
2 disrespect to the pilots in any way, of course, because it's
3 not their -- you know, it's just the terms of our agreement,
4 but we've had a number of issues that have come up that are
5 outlined in Mr. Spanjers' and Mr. Menke's declaration that led
6 to our liquidity problems.

7 And our liquidity problems were not caused by Delta.
8 You know, we discussed before the fact that there wasn't any
9 payment that was due and owing under the terms of our contract
10 that Delta had failed to make. That's what I had discussed
11 before when I was up previously.

12 So Mr. Spanjers and Mr. Menke both explained that our
13 liquidity crisis came from four factors. I'd alluded to them
14 before, but they're spelled out in their declarations, and
15 they're spelled out very extensively in Mr. Spanjers' first-day
16 declaration. The first was, I mentioned the integration, that
17 we were trying to go from three certificates to two and
18 integrate Mesaba into our operations. And we had -- the
19 company had an idea that that would take a certain amount of
20 time, and had expected that that was going to be done by May
21 11th. And it didn't happen -- of 2011 -- May of 2011. And it
22 didn't happen till January of 2012.

23 And that delay obviously caused a lot of additional
24 costs and redundancies to have to be in place, because when you
25 have these various operating certificates, you have to have a

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1 certain number of officers that are in charge of each separate
2 operating functions. You have a lot of duplication in terms of
3 functions. And we weren't able to get the efficiencies of
4 going down to the second certificate as quickly as we hoped.
5 It's a process we have to work through with the FAA. The FAA
6 has to approve it. It's not necessarily something that was in
7 anyone's control, but unfortunately, it caused loss of money.

8 The second thing was our collective bargaining
9 agreement outlined, again, in Mr. Spanjers' first-day
10 declaration. Unfortunately, we have a lot of issues with
11 respect to our training events and some other issues regarding
12 what I'll describe as issues about vacancies and how that --
13 when for example, there's a vacancy and there's a seniority
14 list that was put in place through the arbitration process and
15 through the issuance of the list, that this caused unusual
16 training events beyond what the company had had before. And
17 that caused a significant amount of dollars to go out the door
18 on these training events, much more than the company had
19 anticipated.

20 Again, none of this is Delta's fault. This is what
21 happened to us pre-bankruptcy and what we're facing.

22 We have a bunch of unprofitable contracts. We
23 discussed the unprofitable Delta contract. Previously, on the
24 first day, we discussed the unprofitable United contract, which
25 was losing a lot of money, and that's why the company got

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1 permission to terminate that agreement from Your Honor
2 previously.

3 We also had already made the decision before the
4 company did -- before the bankruptcy filing to wind down US Air
5 flying. And then we had just other oper --

6 THE COURT: To wind down what? Excuse me.

7 MS. BECKERMAN: US Air's pro-rate flying. We had
8 agreements with US Air. And that had been decided many months
9 before the bankruptcy filing, because what had happened is, as
10 also set forth in both Mr. Menke's declaration and Mr.
11 Spanjers' declaration, is that in July of 2011, Mr. Menke
12 joined the debtors' operations. And Mr. Menke, having been
13 involved before in Frontier and having been the CEO of Frontier
14 in its bankruptcy process, was asked to look at -- as he would
15 do coming into any new position -- he looked at all the
16 company's contracts and all the company's situation.

17 And when the company's new management came in, the new
18 CFO, Mr. Christie, and Mr. Menke, and conducted this analysis,
19 and including with outside help from Seabury, these issues came
20 to the forefront of how problematic all these things were and
21 how much money the company had been losing. And I think that
22 the company took steps to try to address that to avoid
23 bankruptcy. That's all spelled out in the declarations.

24 And so the company ended up in a liquidity crisis
25 because it had these four problems. It had the three I just

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1 mentioned and plus it wasn't making -- it wasn't satisfying its
2 operational performance requirements under contracts in 2011,
3 which caused it to pay penalties. And until it could deal with
4 fixing some of those problems, it was losing money due to that.

5 So the company got to this point, not because of
6 Delta. It got to this point because it had these four major
7 problems plus, I'm sure, any number of other ones. But we'll
8 just highlight on those four. So the fact that people are
9 surprised that we're standing here or are somehow thinking that
10 Delta forced this to happen, is just clearly not the case,
11 based on the testimony.

12 So then we get to well, all right, we had these
13 contracts with Delta, the Delta Connection agreements. I'll
14 try not to use DCAs, sorry. I apologize; I think I did it
15 before.

16 THE COURT: You have about fifty percent compliance.
17 I guess you should be congratulated.

18 MS. BECKERMAN: Sorry. So we had these three
19 agreements. We talked about the one that was just
20 unprofitable, period. So when we were in the negotiations with
21 Delta and we couldn't renegotiate that agreement, were then
22 focused on the other two agreements, which obviously the
23 company felt could be profitable and the company was operating
24 under.

25 So you say well, what would we think about could be

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1 profitable? Well, we started the Delta proposed rates. We
2 obviously pushed back based on what we thought were achievable
3 cost savings based on that benchmark study that the company did
4 about where our labor rates and other issues are, and based on
5 the fact that in Chapter 11, people also get cost savings, not
6 just from labor, of course, in this situation, but facilities,
7 lease rejections, contract renegotiations, as happens in every
8 bankruptcy, and certainly in any airline bankruptcy we've ever
9 been involved in has all that.

10 So when management was renegotiating these contracts,
11 it was with the understanding that it couldn't, with our pilot
12 contract and all of our seniority problems and our vacancy
13 bidding and our training costs that have gone through the
14 roof -- we couldn't just operate without changes. If we didn't
15 have any changes to these Delta agreements, we would still be
16 in a position where we would have all these reasons that led to
17 our liquidity problem. We would have to be in Chapter 11. And
18 we'd have to be seeking concessions.

19 So when we were negotiating these contracts, the
20 management took in mind what was achievable. They obviously
21 didn't pick situations where there would have to be cost
22 savings. But what Mr. Jonas is saying is, if we get absolutely
23 zero in cost savings from either labor or nonlabor, we would be
24 in a situation where these contracts aren't profitable. That's
25 true. I mean, that is true. The two contracts we're talking

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1 about, if we got absolutely zero.

2 But I don't think there's ever been a bankruptcy
3 proceeding for an airline where somebody didn't get either
4 nonunion, nonlabor-related cost savings, by renegotiating their
5 facilities, looking at their leases, dealing with their
6 contracts. And also, in most bankruptcies for airlines, there
7 is obviously an issue about the labor cost savings, both the
8 union and nonunion, in this case.

9 And so the fact that these contracts that we're asking
10 to assume presume that we need to get these cost savings, yes,
11 that's true. We need some cost savings. We do need some cost
12 savings. If we had zero, these would be unprofitable. But I
13 don't think the expectation sitting in Chapter 11 today, is
14 that we would get zero cost savings from those buckets, number
15 one; and that the whole reason we need to be in Chapter 11 is
16 because we have issues with some of our contracts, including,
17 unfortunately, some of the issues in our pilot contract, in
18 particular. And so we would be needing to renegotiate those,
19 whatever we had done with the Delta Connection agreements, the
20 other two.

21 So from our perspective, the idea that Mr. Jonas is
22 saying that you shouldn't go ahead and allow us to move forward
23 and have the DIP approved today because we are asking you to
24 assume contracts that would be unprofitable if we had zero cost
25 savings, I don't think is -- I don't think it's unreasonable on

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1 our part to be asking you to assume those contracts, because we
2 can't get the DIP without it. We've discussed that. Yes, it's
3 certainly true. I did not -- my first term sheet certainly
4 didn't involve assuming these -- modifying these contracts and
5 assuming them, or then modifying them and assuming them after
6 the bankruptcy. Of course.

7 But we are in the situation where we needed to move
8 forward in a situation where we were going to run out of money,
9 and we needed to have a DIP financing. And as we've discussed
10 before, this is truly the only alternative. And the
11 management, which has fiduciary duties to everybody, would not
12 have negotiated contracts that required cost savings if it
13 didn't think that they were reasonably achievable. And the
14 declarations say that they believe they're reasonably
15 achievable, and they're not based on getting cost savings
16 beyond what exists out there in its competitors. It's based on
17 what the management thinks is achievable.

18 And these contracts are not unprofitable if we don't
19 get every dollar of cost savings that we're seeking. They are
20 certainly going to be unprofitable if we get zero dollars of
21 cost savings. But that's not realistic being in Chapter 11.
22 And that's not the purpose -- our Chapter 11 process requires
23 us to reorganize and analyze all those things, and that's the
24 whole purpose.

25 So from our perspective, I understand Mr. Jonas'

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1 argument. He's right, if I got not one dime of cost savings.
2 But that's not our situation, and we think, based on the fact
3 that -- of the type of industry we're in, the type of situation
4 we're in, the management's judgment on this, that it's
5 appropriate to allow us to assume our agreements on a business
6 judgment -- as part of the DIP process. So I wanted to make
7 sure I mentioned that.

8 Mr. Morris, I think, talked about the sort of
9 relationship and how much influence Delta has over this process
10 and how he congratulates them for running this process. Well,
11 again, respectfully, Mr. Spanjers' declaration from the first
12 day explains what led this company into bankruptcy proceedings,
13 and it wasn't Delta. And Mr. Menke's declaration explains that
14 Delta had not failed to make a payment that was due and owing
15 to us. So it isn't Delta's fault that we had a liquidity
16 crisis.

17 And Delta is not responsible for any of the four
18 things that we talked about, other than the fact that we had
19 our unprofitable 900 contract with Delta -- that's the third
20 contract that we are winding down, as opposed to the other two
21 that we will continue flying under for long periods of time, if
22 the assumption's granted. But they are -- but in connection
23 with that, I think he -- you can't blame all this on Delta.

24 Now, is Delta really important for this company? Yes.
25 If we had never amended these contracts, Delta was already our

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1 eighty-percent customer before any wind-down of United and US
2 Air. The US Air decision had already been made way -- a number
3 of months prior to the bankruptcy. Delta had nothing to do
4 with that. The United decision to discontinue flying, you've
5 heard a lot of information about that in connection with the
6 motion to terminate the United contract. That certainly was
7 not Delta's decision. That was an analysis that was done by
8 management. And in fact, Delta had told us if we could
9 restructure it in a way that worked, they weren't opposed to
10 it. We just could never do that. So we never were in a
11 situation that it could work.

12 So the idea that Delta is forcing us to go down to
13 them as our only customer is just simply not correct. That's
14 decisions made by the management after looking at the analysis
15 of the contracts, trying to renegotiate them with these other
16 third parties, and not being able to in a way that made
17 economic sense for the company.

18 Then we get to the situation of, okay, Delta is our
19 lessor, our primary lessor of our aircraft. That's true; we
20 lease 181 aircraft. If we never made one change to the DCA,
21 Delta Connection agreement -- sorry, I stopped myself; I
22 apologize -- we would be in the same position. They're -- they
23 clearly played a major impetus in our business plan. They are
24 also a secured creditor of ours since 2010. That -- that's
25 also true. They have a note; we've made payments on it in

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1 accordance with the terms. As of the bankruptcy filing, it's
2 owed forty-four million dollars; they have some collateral that
3 we discussed before; they have their rights and that's -- they
4 wear many hats.

5 That was before we got to the DIP lender hat. So all
6 that would have been out there. No matter what happened in
7 this proceeding, Delta would have been in all those hats that
8 we just talked about and would have a major influence.

9 But does that mean that we capitulated to Delta or we
10 did exactly what they said? The evidence does not show that,
11 Your Honor. Our declarations that we put in from the company
12 clearly show that there was arm's-length negotiations that went
13 on for a month over the DIP and the contract terms; that people
14 did not get everything that they wanted in this -- Delta ended
15 up getting -- having to agree to do many things they did not
16 want to do with us; we had to -- unfortunately, we did not get
17 everything we wanted from them. And that is the evidence --
18 the perfect example of arm's-length bargaining.

19 And while I realize that there are many people in
20 court who don't know me, there are many people in court who do
21 know me. And the people who do know me and remember me from
22 the Delta bankruptcy proceeding would know that I have spent
23 two years in my prior role as committee counsel fighting with
24 Delta. When I took this assignment, I knew I would be fighting
25 with Delta; I knew that these would be difficult negotiations.

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1 The management team understood these would be difficult
2 negotiations. And they were. We're not telling you they were
3 easy. Management came down to a decision at the end of the day
4 that it weighed very seriously, but made the decision it felt
5 was best for the estates and the interests of all stakeholders.

6 But this was not a lay-down. We spent -- I would
7 describe it as a fifteen-round slugfest. I mean we did not
8 agree to these changes easily. There was a lot of negotiation
9 back and forth. We exchanged many term sheets. And people can
10 say what they want, but that's just the facts of it.

11 Now, does Delta have a lot of cards in this situation?
12 Sure. But did we have any cards on the other hand? Yeah. If
13 we shut down 200 planes, while it's not in the best interests
14 of our stakeholders, it's definitely going to cause some havoc
15 in their business. So it's not that we had no role in this.
16 And management was exercising its fiduciary responsibilities to
17 the entire enterprise and all of its stakeholders when it
18 entered into these negotiations and management and the board
19 made their decision.

20 Is anything perfect? Would there be things I would
21 like to change in any agreement? Sure. We didn't get
22 everything we wanted, but I think we have an overall package
23 that management ultimately was faced with and had to decide --
24 and the board. Are we doing this or are we going naked into
25 bankruptcy and letting this whole process fail?

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1 Okay, and then what can happen now that -- if the
2 Court were to approve the DIP? We obviously have an exit,
3 potentially. So we know we can get out. That was definitely a
4 point that we were -- fought very hard for; Delta did not want
5 to do that. It did not want to. But the management team and
6 the board was pretty adamant that we weren't going in here if
7 we didn't know if we could get out.

8 And between the management and the professionals, we
9 obviously negotiated a very favorable exit facility as well as
10 a DIP in this circumstance, potentially staple. Is the company
11 required to take that? No. If we find something better, if
12 something changes, we don't have to take it, but it's there.
13 So it's out there to allow us to get out of bankruptcy.

14 We have enough time because we have a year from our
15 filing date to accomplish our cost savings. We have an ability
16 to run our business in the meantime. We have employment for
17 our employees. We have an ability to potentially reorganize
18 based on all those things if we can get those achieved cost
19 savings and have a profitable business plan where our creditors
20 are going to get repaid. That's what the decision the board
21 was facing when it was looking at the factors that were
22 discussed in Farmland and what was in the best interests of the
23 estate. That was all there if we took the package. Is
24 everything perfect? Would we like things to change? No, but
25 that's what was our choice. That was management's choice.

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1 And the other choice is to -- would have been to just
2 look at liquidation and shut down or take our risks here,
3 knowing -- file for bankruptcy, knowing that we could just have
4 to shut down sixty days in and nothing was going to change. We
5 really have seen -- because we've already been in bankruptcy
6 forty-five days -- that we haven't found another DIP lender;
7 that, despite the creditors' committee going out and trying to
8 look for one, Mark Shapiro going out and trying -- his team
9 going out to look for one -- we didn't find someone else. So
10 we would have gotten to our point in the cash where we would
11 have had to shut down if the board had made the other decision.

12 And while I understand why the equity holders and
13 other parties would have liked to see us not have to agree to
14 resolve the outstanding disputes we had with Delta at that
15 point -- and I wanted to raise a point on that -- people have
16 complained about our release. The settlement and release
17 agreement, as you know, Your Honor, is filed under seal, but I
18 know you have an unredacted copy so you can obviously see it
19 yourself. It just releases the causes of action that were
20 settled, there very specific ones; that's it. It's not a broad
21 release; it doesn't release anything else.

22 In the DIP, which the order is clear about, we have a
23 release for Delta as the DIP lender, as every DIP lender gets
24 in its capacity as DIP lender, but not in its capacity as pre-
25 petition lender or with respect to its pre-petition issues.

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1 And there is a provision, as Mr. Miller made reference to in
2 his statement, that we have a challenge period that has been
3 lengthened by another thirty days for the committee and is
4 seventy-five days for other people, to allow them to
5 investigate, do what they need to do --

6 THE COURT: Pause right there. Do the other people
7 have to make a Housecraft, Commodore or STN showing before they
8 can be going after --

9 MS. BECKERMAN: They would have to come in for
10 standing, yes, the other parties. We gave the committee --

11 THE COURT: The creditors' committee gets automatic
12 standing, but the others have to make an STN or --

13 MS. BECKERMAN: That's correct.

14 THE COURT: -- Commodore showing?

15 MS. BECKERMAN: That's correct.

16 THE COURT: Okay.

17 MS. BECKERMAN: That's correct. And I'm sure Mr.
18 Miller would tell you he's going to investigate because I've
19 been in other cases with Mr. Miller where he was the creditors'
20 committee and he does what he's supposed to do, his team, so
21 I'm sure they will do their investigation. And if they find
22 something, I'm sure we will be hearing about it. So I think
23 that those are preserved.

24 We're not releasing Delta in any other capacity,
25 though. The provisions of the DIP order were specifically

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1 crafted, frankly, in the way I drafted them myself to be clear
2 that the stipulations that we, the debtor, are bound by on day
3 one all relate to the pre-petition promissory note and the
4 collateral and the liens related to that in their capacity as
5 lender. And it relates to, obviously, the DIP process that
6 we're agreeing to give them a release on, and that's what it
7 is. And even those stipulations are not binding on other
8 people until after the challenge period. I don't think I would
9 describe this as a broad release of Delta. We're not releasing
10 them for everything we could ever have a claim for on day one
11 under any of our other agreements. It's just -- that's simply
12 not true.

13 So people -- again, we have provided for appropriate
14 safeguards for other parties, who have a chance to come in and
15 look at things to challenge if they think there's something
16 that happened that was untoward or problematic. So I think
17 that is an appropriate balancing of those safeguards under the
18 circumstances.

19 Yes, I agree with Mr. Miller that this is an unusual
20 DIP. I think I said it when I started. It's not that typical
21 to have another airline providing a DIP to a other airline. In
22 airline bankruptcies, DIPs seem to be a little unusual with the
23 credit card companies doing them in other circumstances, like
24 Delta and United. But you under -- from the reasons that we've
25 explained -- I explained to you before and other people have

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1 commented on, there is not an ability to get a traditional DIP
2 in this circumstance; a traditional DIP lender wasn't
3 interested for all the reasons.

4 So we are obviously in a situation where the party
5 that cared the most about Pinnacle's survival was Delta. And I
6 don't think that they used their position to extract untoward
7 provisions, either in the contract or unfair negotiations out
8 of this process or that these negotiations should not be deemed
9 to be arm's length and appropriate. And therefore, Your Honor,
10 I would ask you to approve the DIP and the assumption of the
11 contracts and the allowance of the claim as we're seeking in
12 our motion today.

13 THE COURT: All right. Now, Ms. Beckerman, Mr. Jonas
14 made a point in his second round of remarks that I had failed
15 to focus on the fact that there's a carve-out from my case
16 management order on evidentiary hearings where certain types of
17 hearings identified by number in the Local Rule are
18 incorporated by reference, and he indicated he wants to cross-
19 examine your witnesses.

20 I'm wondering if he's right on what the local rule in
21 the case management order says. And my next question, then, is
22 is he, in fact, wrong and do you have witnesses who can answer
23 his questions?

24 MS. BECKERMAN: Okay. Your Honor, we think he's
25 right. In fairness, he represented correctly what the

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1 discussions have been between ourselves and the creditors'
2 committee counsel, et cetera. We all read the rule, hopefully
3 correctly, that that's an exception; the DIP hearing is
4 generally a position where a first hearing can be evidentiary,
5 and our assumption was it would be. We have all three of our
6 declarants in court. We would obviously be happy to allow them
7 to be cross-examined with, obviously, having the opportunity to
8 redirect. But we would be happy to offer them up --

9 THE COURT: All right. Here's what I want --

10 MS. BECKERMAN: -- if Your Honor would like to do
11 that.

12 THE COURT: Forgive me. Here's what I want you to do,
13 then. It's now five of 1 anyway. I want you to -- we're going
14 to take a lunch break. And I customarily take or give counsel,
15 both, an hour and a quarter. I think we should probably do it
16 in an hour and a half because I'm going to have a second task
17 for you over the lunch hour. And find out from Mr. Jonas who
18 he wants to cross and put up those witnesses at the end of the
19 lunch break. Then I will take no further oral argument on this
20 after the lunch break, except if anybody thinks any very, very
21 brief argument based on the cross is appropriate by way of
22 summation. But I think I understand the issues here now.

23 Secondly, your second assignment, if I can use that
24 expression, over the lunch hour -- is Ms. Ellerman here? Yeah.

25 Welcome, Ms. Ellerman. I actually like seeing out-of-

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1 town lawyers in the court; they're a refreshing change, with no
2 disrespect from -- to --

3 MS. ELLERMAN: The usual suspects?

4 THE COURT: -- to the usual suspects. And I don't
5 blame you for not knowing about my case management order; there
6 were a bunch of things that weren't complied with, but the most
7 important one that wasn't complied with was the duty to confer
8 for a consensual resolution on relief-from-stay motions. I'd
9 like you to talk to Ms. Beckerman and her designee -- or her
10 designee over the course of the lunch hour over the first
11 question that I would be asking you guys on the oral argument,
12 is a possible way, by consensually making your deal to respond
13 to the first question I'd be asking, which is, given the Second
14 Circuit's Yale Express case, given the potential prejudice to
15 the debtor of terminating this contract before they have a
16 pinch hitter, but on the other hand, the fact that I wouldn't
17 expect your client to provide its services for free without
18 being compensated for its out-of-pocket costs, whether there
19 are advantages or disadvantages to what my ruling might
20 ultimately be, which is you can't pull the plug until they can
21 get a substitute within the ninety days that they're talking
22 about, but that either Delta or the debtor or some combination
23 of them has to make sure that you're made whole on your out-of-
24 pocket costs. And I want you guys to discuss that over the
25 lunch hour. I don't expect a substantive response right now.

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1 MS. ELLERMAN: Thank you, Your Honor. First, I would
2 like to apologize for any failure to comply with the Court's
3 order; that certainly wasn't my intention and will not happen
4 again.

5 THE COURT: Sure.

6 MS. ELLERMAN: Secondly, we have been having
7 discussions, and I think we have effectively reached an
8 agreement that would need to be papered. We did not discuss
9 the Court's second point regarding the costs, and I think
10 that --

11 THE COURT: Well, if you have a deal, I don't want --

12 MS. ELLERMAN: Yeah, I think --

13 THE COURT: -- to blow the deal.

14 MS. ELLERMAN: Right.

15 MS. BECKERMAN: Yes. Thank you, Your Honor.

16 THE COURT: But --

17 MS. ELLERMAN: Yeah, the Court's comments went beyond
18 what was agreed to, but our view is that we will have an
19 administrative claim on it for our out-of-pocket costs.

20 THE COURT: Oh, okay. And would it help you to put
21 whatever you and she agreed on on the record now so you can
22 catch a plane and go home? Unless you find this entertaining?
23 The remaining --

24 MS. ELLERMAN: That would be helpful, Your Honor. If
25 I could grab my binder very quickly --

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1 THE COURT: Sure.

2 MS. ELLERMAN: -- then I think we can do that.

3 THE COURT: Sure.

4 MS. ELLERMAN: Your Honor, we've also consulted with
5 counsel for Delta as well with respect to this. Let's see.

6 The parties -- I don't know that I can recite it
7 eloquently, Your Honor, but in sum, the parties have agreed
8 with the counterproposal that's contained in the debtors'
9 objection to the motion for relief from stay, which provides
10 that the debtors shall receive at least ninety days to ensure
11 that Standard Aero (a) completes all work in process, including
12 any engines, line replacement units and piece parts within the
13 turnaround time requirements of the maintenance agreement --
14 is, I believe, how it's defined in the motion -- winds down
15 such work in an orderly fashion, returns all tooling owned by
16 the debtors or Delta and permits the debtors and Delta return
17 four on-wing leased engines to allow for necessary maintenance
18 and other facilities, and provides for a waiver to permit the
19 debtors to begin a transition to other third parties.

20 I would, consistent with the Court's statement, also
21 include language that Standard Aero reserves all rights to file
22 any claims on a go-forward. That's already contained in the
23 DIP order.

24 MS. BECKERMAN: Yeah, and we will -- our DIP order
25 says that we are not waiving -- we're not releasing you from --

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1 MS. ELLERMAN: Right.

2 MS. BECKERMAN: -- we're not being released from any
3 claims. I don't think that's the same thing exactly. But I
4 understand. We don't -- I will just say Delta and ourselves
5 feel that they have to comply with the contract. So we
6 obviously think if we pay the contract, there isn't any
7 administrative claim. People can file anything; we can dispute
8 it if that's what we're talking about.

9 MS. ELLERMAN: Yeah.

10 MS. BECKERMAN: But I don't think we're agreeing that
11 they have some other claim beyond what we owe them under the
12 terms of our agreement.

13 MS. ELLERMAN: Your Honor, that's not what we've asked
14 for. We just want to include a reservation of rights in the
15 order, which I think is reasonable under the circumstances.

16 THE COURT: I, with my experience, can sense when you
17 have the makings of a deal on the one hand or what -- and when
18 we have the makings of a blow-up on the other. I think this is
19 the makings of a deal. And what I think you guys should do is
20 paper your deal. And I'm going to continue your motion so it
21 doesn't fall between the outfielders until you've got your
22 deal. And I think what you've done is constructive and it's so
23 close to what a possible outcome might have been if you'd
24 litigated it anyway that it's not likely to be disapproved by
25 me if you can get it papered.

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1 MS. ELLERMAN: Thank you, Your Honor.

2 THE COURT: Okay. Have I given everybody who wanted
3 to weigh in on this an opportunity to speak?

4 MS. BECKERMAN: I don't know. I was actually looking
5 at Delta's counsel, who's the third party to this agreement, as
6 you know. And, obviously, I think Ms. Ellerman mentioned that
7 the agreement would be terminated at the end of the ninety-
8 day --

9 MS. ELLERMAN: Running from today's date.

10 THE COURT: Well, I thought your arbitrator already
11 ruled that it was going to be terminated vis-a-vis Delta.

12 MS. BECKERMAN: Well, I guess people can argue about
13 that. But I'm not Delta's lawyer, so I'm not arguing about
14 that. But what we're agreeing is that it will be terminated,
15 period, in ninety days.

16 THE COURT: In any event, as far as Pinnacle's
17 concerned, it is.

18 MS. BECKERMAN: Yes. In ninety days.

19 THE COURT: All right. Does Delta have a desire to be
20 heard?

21 MR. SELIGMAN: Your Honor, if I could just confer with
22 Ms. Beckerman.

23 THE COURT: Yeah, sure. Take a second, Mr. Seligman.
24 All right. I'm not going to make him come, no.

25 MR. SELIGMAN: Your Honor, the understanding was

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1 correct and it will be deemed terminated as between all parties
2 on the ninetieth day.

3 THE COURT: Okay. Then go ahead, folks. Paper it.
4 You can put in appropriate reservations of rights, but the more
5 that you can agree to so you don't have to reserve further
6 rights, the better I'm going to like it.

7 MS. ELLERMAN: Thank you, Your Honor.

8 THE COURT: Okay.

9 MS. BECKERMAN: Thank you.

10 (Discussion re previous case on docket)

11 THE COURT: Okay. Ms. Ellerman, did you have
12 something?

13 MS. ELLERMAN: I just wanted a clarification, Your
14 Honor. Your Honor is asking us to go ahead and write up the
15 agreed order during the recess and submit it to the Court?

16 THE COURT: Oh, I don't think you need to do it in the
17 recess.

18 MS. ELLERMAN: Okay. Okay.

19 THE COURT: In fact, I thought --

20 MS. ELLERMAN: Just to submit it to the Court.

21 THE COURT: -- that if you had a chance to -- I don't
22 know if you have a plane that you want to catch back to
23 Cincinnati but if you do, I'm not standing in the way of that.

24 MS. ELLERMAN: Thank you, Your Honor. I just wanted
25 the clarification.

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1 THE COURT: I would like you to deal with it at your
2 earliest reasonable convenience.

3 MS. ELLERMAN: Of course. Thank you.

4 THE COURT: Sure.

5 MS. BECKERMAN: We will.

6 THE COURT: Okay. All right. We're going to break
7 for an hour and a half. And I'll -- well, actually, given
8 this, can we now do it in an hour and a quarter? Can you guys
9 eat your lunch and be ready to proceed in an hour and a
10 quarter?

11 MS. BECKERMAN: Yeah.

12 THE COURT: All right. Let's do that. See you guys
13 at 2:20. We're in recess.

14 MS. BECKERMAN: Thank you, Your Honor.

15 MR. QURESHI: Thank you, Your Honor.

16 (Recess from 1:06 p.m. until 2:26 p.m.)

17 THE COURT: Mr. Qureshi?

18 MR. QURESHI: Good afternoon, Your Honor. For the
19 record, Abid Qureshi, Akin Gump Strauss Hauer & Feld, on behalf
20 of Pinnacle Airlines.

21 If I could, very briefly, Your Honor, just let the
22 Court know what we discussed over the lunch break and how we
23 would propose to proceed.

24 So the debtor has two witnesses in support of the DIP.
25 And the declarations for those witnesses, as per Your Honor's

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1 case management order, have been submitted. We have also made
2 a reference to the first-day declaration of Mr. Spanjers. That
3 is already in the record and so we did not intend to call him
4 as a witness as such. We have agreed with the objectors on a
5 joint book of exhibits and handed a set up to Your Honor and to
6 Your Honor's clerk -- or they should be up there somewhere.

7 So, Your Honor, what we discussed at the break was
8 that we would make all of our witnesses available for cross-
9 examination, of course, but that Mr. Jonas would attempt first,
10 through the cross-examination of Mr. Menke, to get done
11 everything he needs to get done. What we would propose is a
12 short break after his testimony is concluded so that they can
13 consider and, with any luck, be done with any further
14 witnesses. But, of course, that would be their call once we
15 get through Mr. Menke.

16 THE COURT: Okay. Mr. Jonas, did he get it right?

17 MR. JONAS: He did, Your Honor.

18 THE COURT: Okay.

19 MR. QURESHI: And so, Your Honor, I may as well, I
20 think, just move the admission of those exhibits because I
21 don't think there's any objection. It's exhibits 1 through 22,
22 which are the two volumes that we handed up. And just to
23 direct Your Honor, Mr. Menke's original declaration is at
24 Exhibit 15. And he also submitted a supplemental declaration
25 at Exhibit 16.

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1 THE COURT: Okay. Mr. Jonas, first, any objection to
2 the introduction of the exhibits?

3 MR. JONAS: No, Your Honor. We've worked fully
4 cooperatively and I think this should go very smoothly. We've
5 agreed on all the exhibits. We have copies of the transcripts,
6 if that's necessary, in terms of the cross. And I think we're
7 ready to go.

8 THE COURT: Okay. Any evidentiary objections to the
9 matter in the affidavits?

10 MR. JONAS: No, Your Honor.

11 THE COURT: Okay.

12 (Various documents were hereby received into evidence as
13 Joint Exhibits 1 through 22, as of this date.)

14 MR. QURESHI: Okay. With that, we'll offer --

15 THE COURT: Then you want to bring him up, Mr.
16 Qureshi?

17 MR. QURESHI: Yeah. Mr. Menke's the president and
18 chief executive officer of Pinnacle and we'll make him
19 available now.

20 THE COURT: Okay. Mr. Menke, would you mind remaining
21 standing, please, and be sworn?

22 (Witness sworn)

23 THE COURT: Just a minute, before we begin. It's kind
24 of noisy. Is that a blower or is that the air outside?

25 UNIDENTIFIED SPEAKER: It's outside.

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1 THE COURT: Okay. Mr. Menke, have a seat, please.

2 Mr. Jonas, when you're ready.

3 MR. JONAS: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. JONAS:

6 Q. Good afternoon, Mr. Menke. How are you?

7 A. I'm fine. Good afternoon.

8 Q. As you know, my name is Jeff Jonas, from Brown Rudnick,
9 and I represent certain equity holders that are objecting to
10 the debtors' DIP motion, and we're here in connection with that
11 objection. And just, for the record, we did depose you
12 yesterday, is that right?

13 A. Yes, sir.

14 Q. Okay. Mr. Menke, under the capacity purchase agreements
15 or contracts that the debtor has with Delta, in February 2012,
16 the debtors submitted to Delta a bill or invoice for forty-four
17 million dollars for the retroactive pilot reset amount due
18 under those contracts, is that right?

19 A. That's correct. It was submitted February 27th.

20 Q. And forty-four million dollars was what the debtors
21 believed Delta owed them under those contracts as a
22 reimbursable, retroactive adjustment to cover certain increased
23 labor costs, is that right?

24 A. That is correct, sir. It -- it included labor costs as
25 well as training expense.

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1 Q. And the forty-four-million-dollar amount was based on the
2 debtors' thorough analysis, correct?

3 A. That is correct. It was based on our analysis.

4 Q. And Delta acknowledged that Delta was accruing at least
5 eighteen million dollars on their books for this retroactive
6 pilot reset amount, is that right?

7 A. That is correct. There was a management member of Delta
8 that stated that they were accruing eighteen million dollars.
9 It was also stated that they need to review the analysis, but
10 there was an accrual that was taking place.

11 Q. Okay. But you billed them for forty-four and Delta told
12 you that they agreed at least that eighteen million dollars was
13 due, is that right?

14 A. They did not agree that it was eighteen million dollars;
15 they just said they were accruing, which went back to,
16 actually, their interpretation from previous management and
17 what they thought would take place, so they were accruing an
18 amount.

19 Q. Okay. In connection with the capacity pricing
20 agreements -- purchase agreements -- excuse me -- the
21 amendments, you're aware of amendments which are dated April
22 1st, 2012?

23 A. Yes, sir.

24 Q. Okay. And the debtors filed bankruptcy on April 1st,
25 2012, is that right?

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1 A. Yes, sir.

2 Q. Well, in terms of timing, what time did the debtors file
3 bankruptcy?

4 A. The filing of the bankruptcy was the evening of the -- of
5 April 1st.

6 Q. Okay. And what time did the debtors sign the amendments
7 to the two contracts with Delta?

8 A. I -- I can't remember exactly the time.

9 Q. Okay. But it was sometime that day?

10 A. It was -- it -- I -- I don't know if it was exactly that
11 day, but I -- it was about that period, correct.

12 Q. Okay. And why did the debtors --

13 MR. JONAS: Strike that.

14 Q. Is it fair to say that these amendments are fairly
15 material?

16 A. Yes, sir.

17 Q. Okay. And those contracts, is it fair to say those are
18 fairly material to the debtors' business?

19 A. Yes, they are.

20 Q. In fact, Delta, going forward, will be the debtors' only
21 customer?

22 A. That is correct.

23 Q. Okay. And those contracts will be the key contracts with
24 the debtors' only customer, is that right?

25 A. Yes, sir.

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1 Q. Sir, why is it that these amendments were done minutes or
2 hours before the debtors filed bankruptcy?

3 A. As we have outlined, there were certain requirements that
4 Delta had, relative to providing a DIP. One was the
5 renegotiation of the contracts. The others were other things
6 that we have discussed in the past, but it was a contingent,
7 relative to getting a DIP loan.

8 Q. Okay. Did you appreciate that the fact of the contracts
9 being amended before entering bankruptcy would, at least in
10 some circumstances, remove those contracts from review by the
11 bankruptcy court -- the amendments from review by the
12 bankruptcy court?

13 A. Yes, sir, we did understand that. But we also understood
14 where Delta stated relative to providing the organization a DIP
15 loan, meaning that if we did not make certain agreements or
16 negotiate certain agreements, that the ability of actually
17 having a DIP loan on the other side may not exist or may be
18 worse.

19 Q. Okay. So Delta told you, if you don't do these amendments
20 and you don't do them before you go into bankruptcy, we're not
21 going to make the DIP loan?

22 A. They were a contingency of actually getting a DIP loan,
23 that is correct.

24 Q. Okay. Let me try the question my way: Delta told the
25 debtors that if the debtors didn't execute the amendments prior

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1 to going into bankruptcy, it wouldn't make the DIP loan; is
2 that -- yes or no?

3 A. That's correct.

4 Q. In connection with those amendments and the setoff and
5 release agreement that the debtors --

6 MR. JONAS: Strike that.

7 Q. The debtors also entered into a setoff and release
8 agreement with Delta shortly before it entered bankruptcy,
9 right?

10 A. I'm assuming you're preferring (sic) to the discrepancies,
11 correct?

12 Q. I'm actually referring to a document which we could show
13 you, which is titled "Setoff and Mutual Release Agreement",
14 which the debtors signed -- the debtors and Delta signed.

15 A. That is correct, relative to discrepancies.

16 Q. Okay. And that's dated April 1st, 2012 as well?

17 A. Yes, sir.

18 Q. So that was signed up, if you will, moments before the
19 debtors entered bankruptcy, right?

20 A. That is correct.

21 Q. Okay. That's another agreement that Delta insisted that
22 the debtors sign before they entered bankruptcy or else they
23 wouldn't get the DIP, is that right?

24 A. That is correct.

25 Q. Okay. And in connection with the capacity purchase

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1 agreement amendments and the setoff and release agreement that
2 the debtors entered into with Delta moments before filing
3 bankruptcy, the debtors gave up the forty-four-million-dollar
4 claim for zero dollars in terms of payment by Delta, is that
5 right?

6 A. Well, as you will remember, it was actually a larger -- it
7 was a grand pot that we were looking at, relative to different
8 discrepancies and how they actually wash out at the end of the
9 day.

10 Q. Just bear with me one second.

11 A. Yes, sir.

12 (Pause)

13 Q. One of the reasons --

14 MR. JONAS: Strike that.

15 Q. I just want to return to your last answer because I want
16 to know if, in fact, any specific payment was made by Delta to
17 the debtors on account of the debtors giving up that forty-
18 four-million-dollar retroactive claim.

19 A. There was not a specific payment to that; there was a
20 global settlement relative to a number of disputes, and that
21 was one that was included.

22 Q. Okay. And one of the reasons this happened was because
23 Delta, the debtors' lessor of planes and soon-to-be sole
24 customer, held all the cards and the debtors were in a -- to
25 use your words -- "disadvantaged leverage position", is that

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1 right?

2 A. They did have negotiating power if you look at the -- the
3 circumstances.

4 Q. Okay. And I just want to make sure -- I want to use your
5 words from the deposition. I'd be happy to show it to you, but
6 I think you used the word, dis -- referring to the debtors, you
7 said "disadvantaged leverage position". Does that sound like
8 something you would have said?

9 A. That's correct.

10 Q. Okay. Did the debt -- now, the forty-four-million-dollar
11 retroactive payment that you billed Delta for, that Delta
12 said -- or said they were accruing an eighteen million dollars,
13 did the debtors ever say, okay, Delta, give us the eighteen
14 million bucks?

15 A. Can you repeat the question, please?

16 Q. Sure. Delta said they're accruing what you billed them
17 forty-four million dollars for at eighteen million dollars,
18 correct?

19 A. That's correct.

20 Q. Okay. Did the debtors ever say --

21 MR. JONAS: Strike that.

22 Q. The debtors, leading up to the bankruptcy, had liquidity
23 issues, right?

24 A. That is correct.

25 Q. Okay. Did the debtors ever say to Delta, well, we billed

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1 you forty-four; we know you're accruing eighteen; so just pay
2 us the eighteen million dollars?

3 A. There was a discussion about the eighteen, relative to an
4 out-of-court restructure plan that we had actually put in front
5 of Delta when we were working with a number of other parties,
6 and that was a request that we had actually asked of them.

7 Q. I'm sorry; I couldn't hear the last piece.

8 A. That -- that was a request that we had of them, was to
9 provide that with the out-of-bankruptcy restructure we were
10 working on.

11 Q. Right. And they said no.

12 A. They said no to just assisting us on the out-of-court
13 restructure.

14 Q. Okay. You asked them for the eighteen and they said, no,
15 we're not going to pay you the eighteen, right?

16 A. It was a lot more than just the eighteen million dollars;
17 there was a number of things that we were actually seeking.

18 Q. Right. Did they pay you the eighteen million dollars at
19 any point in time?

20 A. No, they did not pay us, but, again, just to remind you
21 that we submitted the bill on February 27th. There was
22 actually, as was described earlier, a process relative to
23 negotiating in good faith, which we outline relative to being
24 forty-five to sixty days. We understood that there was a
25 process relative to an arbitration. During our discussions

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1 with Delta, as we were leading into bankruptcy, which actually
2 took place on March 5th, this was when we had a discussion
3 about the laundry list of discrepancies that were taking place.
4 Delta made it -- Delta made it very clear during that period of
5 time that they had a difference of opinion on our forty-four
6 million dollars, so essentially, that's where we continued to
7 focus on, relative to a global settlement on the -- on the
8 discrepancies.

9 Q. They didn't dispute the eighteen million dollars, did
10 they?

11 A. They -- they accrued eighteen million dollars. They have
12 the right to analyze the information. We provided them the
13 information on February 27th. It's important to understand the
14 amount of information that we provided them was a year's worth
15 of data of an organization that was integrating three different
16 carriers; three certificates to two certificates; that was
17 actually going through a significant hiring phase because of
18 issues associated with -- with crews, associated with one of
19 the certificate carriers. So essentially, we provided them the
20 data on February 27th, ten days after the February 17th look-
21 back period.

22 Q. And now, I apologize, I'm a little confused. When did you
23 say to them, we'll take the eighteen million dollars?

24 A. The eighteen million dollars was never offered. There's a
25 negotiation that needs to take place relative to the agreement.

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1 Q. Okay. I thought you told us -- and you can correct it if
2 I've got it wrong -- I thought you told us at one point the
3 debtors were willing to take eighteen million dollars to
4 resolve the retroactive pilot reset adjustment.

5 A. Yeah. And that took place during, probably, the late
6 December/early January period, when we were trying to seek a
7 negotiation, an out-of-court restructure process, which is one
8 of several elements that we were asking Delta to participate in
9 as well as other parties.

10 Q. Okay. Now, at about the same time, that is, late February
11 2012, the debtors also had discussions with Delta about the
12 prospective rate adjustment due under the capacity purchase
13 agreements, is that right?

14 A. They were preliminary discussions relative to what needed
15 take place. But again, they just received the information on
16 February 27th, relative to what potentially would be negotiated
17 on a go-forward basis. As I mentioned in the deposition, the
18 vast majority of the focus was actually on the reimbursement
19 because that was the information that we had -- had provided
20 them relative to the year look-back.

21 Q. Okay. And the debtors believe that the prospective rate
22 adjustment was in the range of fifteen to twenty million
23 dollars per year, is that right?

24 A. What I stated is that that was our preliminary look, is at
25 fifteen to twenty million dollars, but our focus was on the

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1 reimbursement of the forty-four million dollars, and that's
2 where the vast majority of our work was done. There was still
3 significant amount of negotiations as well as looking at data
4 on a go-forward basis, potentially to what the funds would be
5 on a go-forward.

6 Q. Okay. So let me just see if I got this right. In late
7 February, the debtors believed -- based on their pretty
8 thorough analysis, the debtors believed that Delta owed them
9 forty-four million dollars on account of the retroactive
10 reimbursement, right?

11 A. That is correct.

12 Q. Okay. And in late February 2012, I guess based on a
13 preliminary analysis, the debtors believed that the prospective
14 adjustment -- another component under the contract -- the
15 debtors believed that the prospective adjustment would be
16 fifteen to twenty million dollars a year, is that right?

17 A. That's potentially what I stated, relative to further
18 analysis that needed to be done.

19 Q. Okay. I think you just said that's potentially what I
20 stated, so I want to make sure I understand. Let me try to
21 make the question simpler. In late February 2012, the debtors
22 had preliminarily concluded that, under the contracts with
23 Delta, under the section that provided for a prospective
24 adjustment based on labor costs, the debtors had concluded that
25 the adjustment should be fifteen to twenty million dollars per

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1 year, is that right?

2 A. It was an estimation depending on further analysis.

3 Q. Okay. In connection with the capacity purchase agreement
4 amendments and the setoff and release agreement -- which the
5 debtors entered into on the day that they filed bankruptcy --
6 the debtors also gave up the fifteen to twenty-million-dollar
7 prospective -- claim for prospective adjustment -- the fifteen
8 to twenty million dollars per year for a zero-dollar payment by
9 Delta, correct?

10 A. Well, I think you misunderstand how the contract actually
11 works. So it did not give up the amount because there actually
12 is a negotiation relative to -- the prospective actually gets
13 built into a per-block-hour rate.

14 Q. Just one second.

15 (Pause)

16 Q. So I just want to come back because I -- and I'm not
17 trying to trick you -- I asked at the deposition and my
18 question was: "So my question is I take it, then, it's fair to
19 say that specifically with respect to the prospective
20 adjustment, the debtor" -- says get -- "getting a specific
21 amount paid to it." I think the question was the debtor wasn't
22 get anything paid to it.

23 And your answer was: "That's correct."

24 And I'm just trying to confirm whether, today, that's
25 correct or not.

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1 MR. QURESHI: Sorry to interrupt. I just need the
2 page number.

3 MR. JONAS: That's fine. I'm sorry. It's page 51.

4 And, Your Honor, I'm not sure you have a copy.

5 THE COURT: I don't think I do.

6 MR. JONAS: Happy to hand that up. May I?

7 THE COURT: Yes.

8 MR. JONAS: Thank you.

9 THE COURT: Did you say 51, Mr. Jonas?

10 MR. JONAS: Page 51, yes, Your Honor. It's a
11 compressed version --

12 THE COURT: Sure.

13 MR. JONAS: -- just to make things easier.

14 Q. And rather than do it the hard way, I'll try and do it the
15 easy way, Mr. Menke. If you just look at page 51, maybe this
16 will refresh both of us. If you just read from line 3
17 through -- I'm sorry; line 6 through 16. And then I'll just
18 pose a new question to you and we'll see if we can straighten
19 this out. Hopefully, I can just move on.

20 A. Okay. I got it.

21 Q. Okay. My question is, in connection with the capacity
22 purchase agreement amendments that were executed on the day the
23 debtors filed bankruptcy, were the debtors compensated for the
24 claims they had for the prospective rate adjustment?

25 A. There was no compensation. The contract clearly states

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1 that there will be a negotiation focused on what those rates
2 would be on a go-forward basis.

3 Q. Thank you. Let me ask you, sir, had Delta paid the
4 debtors the forty-four-million-dollar retroactive reimbursement
5 and the fifteen to twenty-million-dollar per year -- but let's
6 just use it for the first year -- prospective adjustment, would
7 the -- might the debtors have been able to avoid filing
8 bankruptcy on April 1st, 2012?

9 A. Well, for operating outside of the boundary of what the
10 contract states relative to negotiating such a lump sum and
11 they would have paid it at face value, it would have kept the
12 organization out of bankruptcy. But, again, I refer back to
13 the contract that we had with Delta that stated that there was
14 a time frame relative to negotiating a significant amount of
15 complicated material and the ability to actually go through a
16 process that both -- both parties had agreed to.

17 Q. Okay. Just so we don't confuse things, I think it can be
18 answered yes and no. If Delta paid the forty-four-million-
19 dollar bill that the debtors had submitted for the retroactive
20 rate adjustment and the fifteen to twenty million dollars,
21 which the debtors had estimated was due on account of the
22 prospective rate adjustment, might the debtors have avoided
23 filing bankruptcy on April 1st, 2012?

24 A. Yes.

25 Q. Okay. Want to move on to Exhibit 15.

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1 MR. JONAS: I think you have a binder, Your Honor.

2 I'm going to -- if I may approach, I'll hand the --

3 Is the binder there?

4 THE COURT: Yes, I do.

5 MR. JONAS: Thank you.

6 THE COURT: If I heard you right, you said 50?

7 MR. JONAS: 15, Your Honor.

8 THE COURT: Okay.

9 MR. JONAS: In volume -- it should be in volume 2, not
10 that that matters.

11 Q. Mr. Menke, this is Exhibit 15. It's your declaration.

12 It's dated April 1st. And I just want to -- I don't want to
13 spend a lot of time on this; we'll just do a few questions.

14 Take a look at paragraph 15. And do you see the sentence that
15 says "The debtors' month-end cash balance, absent a DIP loan,
16 and the assumption that Delta would be authorized to exercise
17 their right to setoff would be less than five million dollars
18 by the end of June 2012." Do you see that?

19 A. Yes, sir.

20 Q. And if I look -- I take it that you were able to make that
21 statement based on the budget, which is attached as Exhibit A
22 at the end of your declaration, is that right?

23 A. That is correct --

24 Q. Okay.

25 A. -- if you're looking at the cash flow, yes, sir.

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1 Q. And what I'd like you to do to simplify this, can you just
2 walk the Court through how the budget supports your statement
3 that by June, the debtors would be effectively out of cash?

4 A. Yes, I will do that. If you look at June 29th -- it's the
5 last page, Your Honor.

6 THE COURT: The spreadsheet?

7 THE WITNESS: Yes, sir.

8 THE COURT: Give me a second.

9 The column that's headed June 29th?

10 THE WITNESS: Yes, Your Honor.

11 THE COURT: I'm with you.

12 THE WITNESS: Okay. If you look at the ending cash
13 balance at 40.2 million dollars -- the lower, right-hand
14 corner.

15 THE COURT: 40.222?

16 THE WITNESS: That's -- that's correct, Your Honor.

17 THE COURT: Yes.

18 THE WITNESS: If you subtract thirty million dollars,
19 which is the DIP loan -- if you look at the May 4th column,
20 you'll see proceeds of a DIP loan of thirty million dollars.

21 THE COURT: That being 300 because it's in thousands?

22 THE WITNESS: Yes, that's correct. If you look at the
23 DIP facility, 74.285 on the May 4th column under financing
24 activities --

25 THE COURT: Oh, I'm sorry; I was looking in the wrong

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1 place. Now I see it.

2 THE WITNESS: Okay. So that's the thirty-million DIP
3 loan, Your Honor, that we've been talking about.

4 THE COURT: Um-hum.

5 THE WITNESS: So if we did not get the DIP loan, you
6 would subtract that thirty million from the forty million that
7 I outlined on the lower, right-hand corner. So that's the ten
8 million. And then, as I had stated in my declaration, that if
9 Delta would exercise their setoff rights, the organization
10 would be at, essentially, zero dollars.

11 BY MR. JONAS:

12 Q. So in order to reach the conclusion that in June you'd be
13 out of cash, you made an assumption that Delta would be able to
14 exercise setoff rights, is that right?

15 A. That is correct.

16 Q. Okay. Are you aware that in order to exercise setoff
17 rights, Delta would have to come before the bankruptcy court?

18 A. That is correct.

19 Q. Okay. But nevertheless, you made the assumption that they
20 would be able to do that?

21 A. I did, but I've also stated in the declaration that the
22 organization can never run under twenty million dollars in cash
23 at any one point.

24 Q. Okay. I appreciate that, and we'll talk about the twenty
25 million. Right now, I just want to focus on the fact that your

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1 testimony in your declaration was you'd be out of cash in June,
2 based on Delta exercising ten million dollars of setoff rights,
3 correct?

4 A. And -- and -- and the important thing is, is that you
5 actually have pretty -- pretty big fluctuations intra-month,
6 and the large -- the higher cash position is actually at the
7 end of the -- at the end of the month raced on -- based on the
8 payments that were actually outlined by counsel earlier.

9 Q. Okay. But I just want to keep it simple.

10 A. Okay.

11 Q. Your budget shows at the end of the -- excuse me -- the
12 end of June, you're out of cash and the way you get there is
13 you have forty million, you take away the DIP -- because you're
14 assuming you're not going to get the DIP, correct?

15 A. That's correct.

16 Q. And you got ten million dollars and then you're assuming
17 that the ten million dollars goes away because Delta exercises
18 ten million dollars of setoff rights, correct?

19 A. That's correct.

20 Q. Okay. Now tell me how you arrived at Delta being able
21 to -- how you arrive at the math for the ten-million-dollar
22 exercise by Delta of a setoff right?

23 A. Okay. There was -- prior to bankruptcy filing, Delta owed
24 us -- because we get paid in arrears -- we were owed
25 approximately twenty million dollars. That was based on fees

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1 owed on the air service agreement, which we call the ASA, as
2 well as some ground handling. On the other side of that, we
3 actually owe Delta for services that they provided us relative
4 the operation that was nineteen million dollars, so that
5 difference is the ten million dollars that we had forecast that
6 they would have the capability of setting off.

7 Q. Okay. So twenty-nine minus nineteen, ten that they get to
8 exercise setoff, right?

9 A. That is correct.

10 Q. Sir, I'm a little confused because where is the forty-four
11 million dollars -- let's just stick with the forty-four million
12 dollars -- that you billed Delta for? Why isn't that figured
13 out when you're trying to figure out how much setoff rights
14 they could have?

15 A. It's not factored in there because it wasn't negotiated at
16 that point in time.

17 Q. Sir, you billed them; you sent an invoice to Delta and you
18 said, you owe us forty-four million dollars, right?

19 A. That's correct.

20 Q. So when you did your analysis to figure out what setoff
21 rights, you were comparing how much we owe them and how much
22 they owe us, right?

23 A. That is correct.

24 Q. But you didn't include the forty-four million dollars that
25 you had sent them a bill for?

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1 A. Well, first, we wouldn't have made it to that point if we
2 did not have a DIP loan.

3 Q. Sir, this assumes that you don't have a DIP loan. Isn't
4 that the whole point of the budget?

5 A. This assumes we have a DIP loan.

6 Q. No, you did an analysis and your statement in paragraph 15
7 is that the debtors' month-end cash balance, absent --
8 absent a DIP loan and the assumption that Delta would be
9 authorized to exercise their right to setoff, would be less
10 than five million dollars by the end of June, correct?

11 A. That's correct.

12 Q. And you made that statement and you prepared the
13 declaration and you did the budget in order to offer up support
14 to the Court on why the Court should approve the Delta DIP,
15 right?

16 A. I disagree.

17 Q. You don't think your declaration is in support of the
18 Court's approval of the DIP?

19 A. Well, I -- I agree with that, but it's based on the
20 budget, relative to the cash position without a DIP, what the
21 DIP does and what Delta could do relative to setoff rights if
22 they did get approval.

23 Q. Let me try it this way. That declaration and that DIP,
24 what that says to the judge is, Judge, if we don't get this
25 DIP, we're out of cash in June. Isn't that what that says?

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1 A. That is correct.

2 Q. Okay. And to get there, to get to that conclusion, you
3 looked at how much you owed Delta and how much Delta owed you
4 so you could see how much Delta would set off to effectively
5 hit or wipe out your cash, right? That's what happened?

6 A. If you're in -- referencing to the twenty-nine and the
7 nineteen --

8 Q. Yes.

9 A. -- gets a ten, that's correct.

10 Q. And, sir, I apologize and if it's the best we can do
11 today, I understand and I'm not going to belabor it, but I
12 still don't understand where the forty-four million dollars
13 went. You billed them and you did this analysis of offsets
14 back and forth under the contract, and you didn't include the
15 forty-four million dollars. Where did it go?

16 A. It was not negotiated because there was a negotiating
17 phase that we needed to talk about.

18 Q. Okay. Let's try the prospective rate adjustment, which
19 the debtors estimated at fifteen to twenty million dollars due
20 to the debtors under the contract, right?

21 A. Estimated.

22 Q. Estimated, yeah. You didn't bill them that amount, did
23 you?

24 A. It was under negotiation. Again --

25 Q. Got it.

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1 A. -- if you read the terms of the contract, at February
2 17th, we were required to provide information. We provided it
3 on February 27th. There's a negotiating period that needs to
4 take place. So there was nothing that was billed to Delta.

5 Q. Sir, where is the prospective rate adjustment when you did
6 the analysis on what Delta's setoff rights are?

7 A. It was negotiated -- there was nothing in there relative
8 to the fifteen to twenty million.

9 Q. Right. Okay. Let's talk about these contracts which got
10 amended on the date you filed bankruptcy, correct?

11 A. Correct.

12 Q. Okay. You wanted the judge to assume the debtors'
13 approval of those contracts today, right?

14 A. That is correct.

15 Q. Okay. And I think at your deposition you told me that,
16 over the debtors' adamant objection, Delta insisted that the
17 contracts be amended immediately prior to the bankruptcy
18 filing, right?

19 A. We were trying to negotiate that those would be nego --
20 that those would be amended afterwards, but they were focused
21 that they actually had to be amended prior to the bankruptcy
22 filing.

23 Q. As a result of those amendments, Delta is actually paying
24 the debtors less than it would under the contracts prior to the
25 amendments, right?

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1 A. Well, that's not absolutely correct. There were actually
2 rate adjustments that were made that actually had an impact, a
3 positive impact, but didn't have the same impact that you would
4 have potentially had if you'd have gone through the rate
5 resets.

6 Q. Let's take a look at your deposition transcript from
7 yesterday, page 137. And I'm going to read the question at
8 line 20, and you can read the answer you gave me yesterday,
9 okay? That's page 137. I'm going to read the question at line
10 20. You'll see Mr. Qureshi has an objection, which we can read
11 into the record, and then I'd like you to read your answer,
12 okay?

13 A. Yes.

14 Q. "And let me ask you, do you think the amended contracts
15 are beneficial to Delta viewed as opposed to prior to the
16 amendments?"

17 A. "The economics are different and they pay less for the
18 flying."

19 Q. "They pay less for the flying." That was your answer,
20 right?

21 A. May I add a comment, sir?

22 Q. Sure.

23 A. After reviewing this last night, based on my statement, I
24 was referring -- thinking through the rate resets that would
25 actually take place. There was a pilot rate reset that was to

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1 be negotiated and then there was a 2013 reset under those
2 contracts.

3 Q. So the answer you gave me at the deposition, that wasn't
4 correct?

5 A. That's correct. That's correct, it -- it was based on --
6 if you're comparing the two contracts at the same period of
7 time without any resets, my statement yesterday was inaccurate.

8 Q. Inaccurate? I see. Well, let me try it a different way.
9 The contract amendments done in the hours before the debtors
10 filed bankruptcy, they were beneficial to Delta, correct?

11 A. There was financial benefit, that's correct.

12 Q. Okay. And the amendments done minutes before the
13 bankruptcy, they make these contracts -- I want to get your
14 words correct -- "economically worse for the debtors", correct?

15 A. Compared to what a reset would actually take place.

16 Q. Well, compared to right before you did the amendments,
17 comparing that contract with the amended contracts, they're
18 worse for the debtors, correct?

19 A. Well, that was the statement that we just discussed, if
20 you look at the two at the exact time that it was signed.

21 Q. Let's try it this way. Taken together today, these are
22 money-losing contracts, correct?

23 A. With the rates that they would provide us and the cost
24 structure that we have, meaning no concessions, they would be
25 money-losing contracts --

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1 Q. Okay.

2 A. -- today.

3 Q. So let me see if I can bring this piece to a close. The
4 debtors are asking the Court to approve, as part of its DIP,
5 the assumption of two -- the most material contracts that the
6 debtors have, you're asking the Court to -- that were amended
7 in the minutes before the bankruptcy filing, that are worse for
8 the debtors, under which today the debtors are losing money,
9 you're asking the judge to approve assumption of those today,
10 is that right?

11 A. That is correct.

12 Q. Okay. Do you understand what happens when a contract's
13 assumed in bankruptcy? Has anybody discussed that with you?
14 And don't tell me about your discussions with legal counsel; do
15 you understand it?

16 A. Yes, I do.

17 Q. And what is your understanding of what happens when the
18 Court approves the assumption of a contract?

19 A. We have to abide by that.

20 Q. Do you understand that it rises to the level of an
21 administrative priority?

22 A. Understood.

23 Q. Okay. And today you're losing money?

24 A. That is correct.

25 Q. Okay. One of the Delta-required milestones in the DIP is

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1 that you obtain certain labor concessions, is that right?

2 A. It's cost savings.

3 Q. Okay. And let me ask you, a fair point, of your costs,
4 how much of your -- percentage-wise, how much of the debtors'
5 costs, roughly, are labor?

6 A. If you exclude pass-through costs and you focus on what I
7 would say are controllable costs, they're over fifty percent.

8 Q. So is it your expectation that to achieve the cost savings
9 that Delta is requiring that you achieve under the DIP, that at
10 least a material portion of those cost savings is going to have
11 to come from labor concessions?

12 A. Labor concessions and other items, that is correct.

13 Q. Okay. Well, do you think that about half of the
14 concessions you have to get relate to labor in light of the
15 fact that labor makes up half of your expenses?

16 A. That is correct.

17 Q. And in fact, the contracts -- the now amended contracts
18 that you have with Delta, you can correlate from those
19 contracts how much cost savings you have to achieve in order
20 for you to be profitable under those contracts, right?

21 A. Yes, we do, and that is based on the negotiation that we
22 had with Delta and what was outlined earlier relative to the
23 company doing a significant amount of analysis relative to our
24 contracts and what market contracts are relative to compete in
25 the regional business.

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1 Q. Well, do you have an expectation as to how much the
2 debtors have to get, by way of concessions from labor, in order
3 to meet the requirement under the DIP, the cost-saving
4 requirement?

5 A. Relative to what we need to do, there was a number
6 relative to the global cost that we needed to get, which was
7 approximately seventy million dollars. Of that, labor makes up
8 about forty-two million dollars. And there is components in
9 the -- when I go back to the seventy million dollars, is that
10 as we shrink the airline there will be overhead structure,
11 meaning management professionals, that will shrink, but that is
12 not concessionary in nature.

13 Q. Mr. Menke, what you need to do with labor in this case is
14 already baked, isn't it? You know what you have to get out of
15 them, don't you?

16 A. We're aware of the concession level we are seeking
17 relative to the marketplace, yes, sir.

18 Q. So when you go to them, what's the negotiation? You're
19 just going to say this is what we need from you, right?

20 A. Well, it'll be a negotiation. We've already been in
21 discussions with them. There are -- if you look at the
22 components, and the largest component is actually the pilot
23 group, and the pilot group makes up, relative to what we are
24 looking at, relative to cost savings, is wages, benefits and
25 work rules, and a big part of it is actually work rules.

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1 Q. And if labor doesn't give you the concessions that you
2 need, you're required to seek rejection of the labor contracts,
3 right?

4 A. That is correct.

5 Q. And your expectation would be that through rejection of
6 the labor contracts, that's how you'll achieve the cost savings
7 that Delta is requiring under the DIP, correct?

8 A. That is correct, if we can't get the cost savings
9 somewhere else.

10 Q. So if you come to the point in time where you need to
11 reject these contracts, the labor contracts --

12 A. Um-hum.

13 Q. -- and the alternative will be you either reject the
14 contracts or things will just blow up, you'll be in default
15 under the DIP, and effectively the case could end, is that your
16 understanding?

17 A. Correct, potentially, if they would exercise their --
18 their rights.

19 Q. So if the point in time comes when you have to seek -- you
20 can't make a deal and you have to seek to reject, you'll come
21 before the Court and say: Judge, we need you to reject these
22 or the case is over. Is that right?

23 A. Again, there would be a discussion with Delta as well,
24 relative to what rights they would actually exercise.

25 Q. Would you say that Delta's been pretty easy to deal with

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1 during this process?

2 A. They're a very good business group. They negotiate hard.

3 Q. So when you --

4 A. They work within their contracts.

5 Q. Sorry. But do you have an expectation that if you need a
6 further favor from them to reduce the labor cost savings that
7 they're requiring, that they'll say sure, we'll do that for
8 you? Is that -- based on your history, based on your
9 experience of negotiating with Delta over the last weeks and
10 months, is that your expectation, that if you need that they're
11 going to give it to you?

12 A. Well, they did give us some things we were seeking when we
13 went -- when we filed, meaning we were looking for exit
14 financing; we actually did get increases relative to the rates
15 that we were looking at getting. There were rates that were
16 provided to us that we were focused on looking at. That didn't
17 work. We went back with our analysis to show what was going to
18 be a viable return for this organization, and they made
19 adjustments. So if you provide information and you provide the
20 argument relative to why certain things are important and why
21 it actually works for the organization, yes, they have done
22 things for the organization.

23 Q. Okay. But just to bring up one point, when you went to
24 them in the end of February and you said, hey, guys, here's all
25 the information on the forty-four million dollars you owe us,

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1 you never got that forty-four million, did you?

2 A. No.

3 Q. Okay. And when you went to them on the prospective
4 adjustment, fifteen to twenty million dollars a year, and you
5 said, hey, that's what it is, we'll give you whatever
6 information you want, you didn't get that from them, did you?

7 A. Again, I'm going to go back to what the contract states
8 relative to the negotiating period and their ability to look at
9 a vast amount of material and not handing over fifteen to
10 twenty million dollars.

11 Q. Mr. Menke, Delta told the debtors that in order for Delta
12 to be part of a restructuring, the debtors were required --
13 must file bankruptcy, isn't that right?

14 A. They said that they would be -- if the debtors filed
15 bankruptcy, they would be willing to help in the form of a DIP
16 loan.

17 Q. Well, you didn't want to file bankruptcy, did you?

18 A. No, I spent numerous months and hours trying to keep the
19 organization out of bankruptcy.

20 Q. Right, and ultimately, the reason you filed was because
21 your only option was Delta, and Delta told you that you had to
22 file, isn't that right?

23 A. No, they didn't tell me I needed to file; I was running
24 out of cash.

25 Q. Right, and they were the only option for you, right?

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1 A. And I filed. I would have filed either way.

2 Q. I just want to come back, one more point on these labor
3 costs we're talking about. You understand that any reduction
4 in labor costs in bankruptcy will get passed through to Delta
5 under the capacity purchase agreements, don't you?

6 A. Well, the rates are already set, so there's not really a
7 pass through that takes place. If they're paying us on a per
8 block hour basis -- that's how we get paid, Your Honor, is we
9 fly an aircraft one hour and we get compensated for that --
10 that's the negotiated rate.

11 Q. Take a look at page 46 of your deposition transcript from
12 yesterday, and I'm going to read the question at line 3. This
13 is page 46. And you just read your answer, which is on line 6.
14 "So any benefit to reduction of labor costs in bankruptcy also
15 gets passed down to Delta, if you will, correct?" And what was
16 your answer?

17 A. I'm sorry, which line, again?

18 Q. I just read line 3 through 5, and I'd like you to read
19 line 6, which was your answer.

20 A. "That's correct."

21 Q. Okay.

22 A. Can I clarify that?

23 Q. No, sir. Sir, I want to talk about the Mesaba note. When
24 I say the Mesaba note, you know I'm referring to the forty-four
25 million dollar note that -- in connection with the Mesaba

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1 transaction where Pinnacle bought Mesaba from Delta a number of
2 years ago. Pinnacle issued a forty-four million dollar note to
3 Delta, correct?

4 A. That's correct.

5 Q. Did the debtors -- and as part of the DIP, the forty-four
6 million dollar Mesaba note is getting paid off, right?

7 A. That is correct; it is being rolled up.

8 Q. Rolled up, paid off, okay. The debtors never sought any
9 relief or restructure of the forty-four million dollar Mesaba
10 note owing to Delta, did they?

11 A. No.

12 Q. The debtors didn't do it because -- I'll quote you from
13 your deposition: "It wasn't in the pot of things we were
14 negotiating." That's what you said, right?

15 A. That's correct.

16 Q. And it never occurred to you to try and seek a discount or
17 restructure the Mesaba note because "it was something that
18 wasn't discussed", is that right?

19 A. That's correct.

20 Q. And I want to show you Exhibit 12-C, which is the proposed
21 order in this case approving the DIP in this case, because
22 we've had some discussion so far today about what gets released
23 and doesn't get released. I want to make sure I understand the
24 company's management's view on that. So if you look at Exhibit
25 12-C, paragraph -- it's on page 29, it rolls -- I'm sorry, it

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1 begins at the bottom of 28, it rolls over to 29. It's
2 paragraph 19. It says "Indemnity and release from liability",
3 and I'm going to read paragraph sub (b). Do you see where I
4 am?

5 A. Yes.

6 THE COURT: I don't. I must be looking at the wrong
7 document.

8 MR. JONAS: It --

9 THE COURT: Mine has sections on page 29.

10 MR. JONAS: If I may approach, Your Honor?

11 THE COURT: Yes.

12 THE WITNESS: Can I also just confirm with you?

13 MR. JONAS: Sure.

14 THE COURT: Wait, I have -- I think I was looking in
15 the wrong volume.

16 MR. JONAS: Wrong volume, sorry, Your Honor. There's
17 two. This is volume 2 of 2.

18 THE COURT: Okay. This is the order.

19 MR. JONAS: Yeah.

20 THE COURT: Okay. And page 29, did you say?

21 MR. JONAS: It's actually, Your Honor, at the bottom
22 of 28. It rolls over to 29.

23 THE COURT: "The DIP lenders, effective
24 immediately --"?

25 MR. JONAS: Yes, Your Honor.

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1 THE COURT: I'm with you now.

2 Q. And this is the proposed -- Mr. Menke, you understand this
3 is the order approving the DIP that the debtors have submitted
4 to the Court for execution today if the DIP's approved?

5 A. Yes, sir.

6 Q. And again, I just want to understand the company's view on
7 this, because I'm confused. In 19(b) it says, "The DIP
8 lenders, effective immediately, and" -- so it says "The DIP
9 lenders, effective immediately", and then it says, comma, "and
10 the promissory note lender, effective only upon the expiry of
11 the challenge period, are hereby released from liability for
12 all claims and causes of action existing as of the petition
13 date arising out of or relating to the DIP facility, the
14 promissory note documents and all other agreements,
15 certificates, instruments, and any documents, statements
16 related thereto." Do you see that?

17 A. Yes, sir.

18 Q. I'm trying to figure out, does the company believe that,
19 pursuant to this language, Delta is being released for any of
20 its pre-petition conduct under the contract, the capacity
21 purchase agreements?

22 A. No, sir.

23 Q. No, sir? Your answer was no?

24 A. Yes.

25 Q. Okay. So at least from the debtors' point of view, those

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1 types of claims will be preserved for challenge by the
2 creditors' committee.

3 A. That's correct.

4 Q. Okay. And you don't think that this language, that the
5 interpretation of this language is that the only thing that the
6 creditors' committee can challenge is the -- what's referred to
7 as the promissory note, which is the forty-four million dollar
8 Mesaba note. You don't take that view? The company doesn't
9 have that view, right?

10 MR. QURESHI: Objection, Your Honor. He's asking the
11 witness to give a legal interpretation of the document. He's
12 already asked the witness what his understanding is as a
13 businessperson. The witness provided --

14 THE COURT: Mr. Jonas, if you want to be heard in
15 opposition to what Mr. Qureshi just said, I'm going to ask the
16 witness to leave the room. If you don't want to be heard, I'll
17 rule on his objection.

18 MR. JONAS: You can rule on the objection, Your Honor.

19 THE COURT: I'm sustaining it.

20 MR. QURESHI: Thank you, Your Honor.

21 MR. JONAS: Can I have one moment, Your Honor? I
22 think I can wrap up.

23 THE COURT: You bet.

24 MR. JONAS: Your Honor, we're finished with this
25 witness.

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1 Thank you, Mr. Menke.

2 THE COURT: Okay.

3 THE WITNESS: Thank you.

4 THE COURT: Mr. Qureshi, redirect?

5 MR. QURESHI: Thank you, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. QURESHI:

8 Q. Mr. Menke, let's start, if we could, please, with the
9 discussion you just had with Mr. Jonas about the forty-four
10 million dollar retroactive adjustment. And start if you would,
11 please, by simply explaining to the Court, first of all, what
12 that adjustment is.

13 A. Okay. When Pinnacle Airlines had acquired Mesaba there
14 was -- within the contract agreement there was the capability
15 of when the carriers were integrating -- because we essentially
16 had three different airlines: Pinnacle Airlines, Colgan
17 Airlines, and Mesaba Airlines. When we were moving through the
18 taking three certificates down to two certificates, because we
19 were going to operate two airlines, Your Honor, there was
20 language within the contract that if the organization
21 renegotiated a contract with its pilots that there would be a
22 look-back period effective February 17 -- effective one year
23 after the contract was actually signed that would actually
24 compensate the airline for the added wage increases as well as
25 the integration expenses.

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1 In addition to that, when that was completed, meaning that
2 year look-back, the organization would also negotiate with
3 Delta on a pilot rate reset which would reset the per block
4 hour amount, again, going back to what I mentioned earlier when
5 we fly one aircraft one hour, that that rate would also be
6 increased. That's a high-level summary of what you're asking.

7 Q. Okay. Now, you were also asked about a prospective rate
8 adjustment of between fifteen and twenty million dollars.

9 Please explain to the Court what the prospective rate
10 adjustment is.

11 A. The prospective rate is really what I had just mentioned
12 relative to the reset on a go-forward basis. And in doing
13 that, it was taking the information that we had actually had
14 over the previous twelve months, understanding the impact of
15 what that rate reset or the pilot wage increase was, as well as
16 some other items that would then be negotiated into what a new
17 rate or an increased rate would be on a per block hour basis.

18 Q. Okay. Now with respect to the forty-four million dollar
19 retroactive adjustment, you testified on cross-examination that
20 in the end of February, Pinnacle provided a bill, an invoice to
21 Delta for that amount. Is that right?

22 A. On February 27th.

23 Q. Okay. Can you please explain to the Court why on that
24 particular date Pinnacle provided that bill to Delta?

25 A. Well, the look-back period, as I mentioned, was February

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1 17th. We took some time to compile the final information
2 because February 17th was the date. We had compiled that
3 information. As I mentioned earlier, it was extremely detailed
4 with a lot of moving pieces because there's a lot of work rules
5 associated with pilots and understanding the line items and
6 actually what each of those costs actually is. So we spent a
7 significant amount of time breaking that out, and then we
8 submitted it to Delta on February 27th.

9 Q. Now, under the contract that you have with Delta, pursuant
10 to which you gave that invoice, I want you to describe for the
11 Court, please, your understanding of the procedure that would
12 have to follow, pursuant to that contract, once Pinnacle
13 delivered to Delta the invoice with its claim for the
14 retroactive adjustment.

15 A. Yes, sir. So the way that the contract is laid out is
16 that once we submit, they're going to go through a period of
17 analysis and then we go into a period of good faith
18 negotiations. We looked at the good faith negotiations;
19 because of the amount of material that was being provided to
20 Delta, it would probably take forty-five to sixty days to work
21 through. At that time we felt that if we weren't going to get
22 to an agreement -- and this is the Pinnacle side, this is not
23 stating how Delta was looking at it -- that that was the amount
24 of time we should be able to have good faith negotiations. It
25 would then go to -- each side actually appoints an arbiter. If

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1 we cannot actually agree to that arbiter, the two arbiters
2 actually appoint another one. So the way that we looked at is
3 the capability, if it would actually go down the entire path,
4 is that the company probably wouldn't be reimbursed for that
5 until the third or fourth quarter of 2012, Your Honor.

6 Q. Okay. Now, if after good faith negotiations that are
7 required by the contract, Delta and Pinnacle were unable to
8 agree upon what the right retrospective adjustment was, please
9 give the Court your understanding of what the next step would
10 be under the contract?

11 A. That would be to assign an arbiter.

12 Q. Okay. And do you have an understanding of how the
13 arbitration would then proceed?

14 A. Well, I walked through the time frame relative to what
15 would take place, meaning you'd appoint an arbiter; if you
16 couldn't agree upon this, the two arbiters would appoint an
17 arbiter.

18 Q. Okay. Mr. Menke, in your opinion, was there -- well, let
19 me back up. At the end of February, do you recall
20 approximately what the debtors' then current projection was for
21 when it would go below what you viewed to be the minimum cash
22 requirements for the company?

23 A. April 13th.

24 Q. Okay. So at the time the invoice was submitted to Delta
25 for Pinnacle's claim of forty-four million dollars, did you,

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1 sir, believe there was any prospect of Delta -- of Pinnacle,
2 I'm sorry, actually receiving from Delta the forty-four million
3 dollars that Pinnacle claimed prior to running below the
4 minimum cash balance that you believed was necessary for the
5 organization?

6 A. My belief was that it was going to be difficult to get to
7 forty-four million dollars because the number that they were
8 looking at was much smaller, so we were going to have to take
9 the time to walk them through the significant amount of detail
10 on what was the difference relative to what their assumption
11 was and what the actual invoice or the analysis we provided on
12 February 27th.

13 Q. Okay. And when did you think, taking yourself back to
14 that time frame, that it was likely that Pinnacle might
15 actually get a dollar amount from Delta based on this claim,
16 whether it's the forty-four million that Pinnacle was claiming
17 or some lesser amount?

18 A. I didn't believe it was actually going to take place until
19 the 3rd or 4th quarter of 2012.

20 Q. Okay. Now let's turn to the fifteen to twenty million
21 dollar prospective adjustment.

22 A. Yes.

23 Q. The procedure that you just described for good faith
24 negotiations, followed by an arbitration if agreement could not
25 be reached, is that your understanding the same procedure

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1 applicable to the prospect of adjustment or is it different?

2 A. It's the same.

3 Q. Okay. So again, in the end of February of this year, what
4 was your best guess of when, pursuant to the steps you had to
5 follow in the contract, Pinnacle might actually receive from
6 Delta a payment in respect of this prospective rate adjustment?

7 A. On that one, in fairness, the amount of analysis that we
8 had done was more on the reimbursement. On the prospective
9 basis, again, I knew it was going to be difficult, but I didn't
10 put a time frame that it would be, you know, the forty-five to
11 sixty days or the third or fourth quarter. But based on the
12 difficulty I assumed was going to take place with
13 reimbursement, I would assume that they would have taken place
14 here as well in the third or fourth quarter.

15 Q. Okay. So in your view, at the time, did these claims,
16 both the retrospective and the prospective rate adjustment,
17 present a solution to the debtors' liquidity crisis?

18 A. No, sir.

19 Q. Okay. Now let's switch gears and talk for a minute about
20 the setoff that was discussed, and specifically on cross-
21 examination you gave a couple of numbers; you said Delta -- I'm
22 sorry, Pinnacle was owed twenty-nine million dollars, is that
23 right?

24 A. Yes, sir.

25 Q. Okay. Let's start with the twenty-nine. Please explain

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1 to the Court what the twenty-nine million dollars is and for
2 what period of time that relates to.

3 A. The twenty-nine million dollars that we were owed is
4 really two components. It was for services that we provided
5 Delta under the air service agreement, meaning that's the
6 flying of the CRJ-200 aircraft as well as some of the ground --
7 some ground handling that we had actually provided Delta
8 Airlines.

9 Q. Okay. So that's dollars owed by Delta to Pinnacle?

10 A. That's correct. So it was earned in March and it was to
11 be paid, actually, post-petition, meaning after the filing.

12 Q. Okay. You also mentioned on cross-examination a nineteen
13 million dollar number going the other way. Please describe for
14 the Court what the nineteen million dollar number consists of
15 and the period of time to which it relates.

16 A. So it is very similar. It was actually services that
17 Delta had provided to Pinnacle Airlines which had to do with
18 catering, ground handling services, and some other items that
19 actually was for the March time frame, but again, was to be
20 paid post-petition.

21 Q. Now, based on your business understanding of the contracts
22 that governed the relationship between Delta and Pinnacle at
23 this time, do you have an understanding of whether Delta was
24 permitted to offset those two amounts?

25 A. Yes, they did have the right to do that.

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1 Q. Just to close out this area of questioning, you were asked
2 on cross-examination to assume a hypothetical. Specifically,
3 you were asked to assume that Delta would write you a check for
4 forty-four million dollars for the retrospective adjustment and
5 fifteen to twenty million dollars for the prospective
6 adjustment the moment you asked for it. Sir, was that a
7 realistic possibility at the time?

8 A. No.

9 Q. Let's move on to a new area now, your declaration -- your
10 original declaration.

11 MR. QURESHI: Your Honor, that is Exhibit 15.

12 Q. And I want to --

13 MR. QURESHI: I apologize, Your Honor.

14 Q. I'd like you to turn to the budget at the back of your
15 exhibit. Let's start, Mr. Menke, with this. What is, in your
16 opinion as the chief executive officer, the minimum level of
17 cash that the debtors need at all times to safely operate?

18 A. Twenty million dollars is what I had stated.

19 Q. And can you just describe, in general terms, why twenty
20 million dollars?

21 A. Yeah, and this is assuming that we're current on all
22 payables. In the airline business, specifically in these
23 contracts, we have some very huge fluctuations in cash flows
24 relative to payments that go back and forth between ourselves
25 and Delta, also with payroll. And typically what we find in

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1 our organization is that the low cash point actually happens in
2 the middle of the month, so the low -- so if you call it the
3 trough to the peak, cash flow within the month can actually be
4 twenty million dollars. The twenty million dollars, in all
5 fairness, relative to the regional airline, is small when you
6 look at it as a percentage of total revenues. But based on
7 actually having contracts that work over a period of time,
8 which is what we're focused on attaining, your cash
9 requirements, you would like to have them higher than this, but
10 very clearly twenty million dollars was the minimum we would be
11 able to be operating with, and that's what I have in my
12 declaration.

13 THE COURT: Pause, please, Mr. Qureshi.

14 Is the twenty million dollars that you referred to,
15 Mr. Menke, at the low point of that -- at that mid-month, or is
16 it the high point, or is it a mean, or is it some other
17 possibility?

18 THE WITNESS: Your Honor, the low point is typically
19 in the middle of the month, so the twenty million is the middle
20 of the month. That's why I'm saying your low point, the twenty
21 million that I say I need to be at, would be in that middle of
22 the month and you would have a higher cash balance, typically,
23 at the end of the month.

24 THE COURT: So if I'm understanding you correctly, the
25 company hits the low point in the middle of the month, and

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1 that's the point at which you've got to be twenty million bucks
2 or higher?

3 THE WITNESS: Yes, Your Honor.

4 THE COURT: Okay, continue, please, Mr. Qureshi.

5 MR. QURESHI: Thank you, Your Honor.

6 Q. You were asked on cross-examination to go through a
7 mathematical exercise of looking at this budget and assuming no
8 DIP. I'd like to return to that for a minute. So if you look
9 at the June 29th column, it's the far right of the page, and
10 the bottom right-hand corner shows ending cash of forty million
11 dollars and change, is that correct?

12 A. Yes.

13 Q. Okay. If you back out the DIP proceeds of thirty million
14 dollars, what's left?

15 A. Ten million dollars.

16 Q. Okay. So assuming no setoff by Delta of any amount, in
17 the scenario of no DIP, based on this budget, would the debtor
18 have been left with sufficient cash by the end of June?

19 A. No. It's below the threshold that I had stated.

20 Q. You were also asked, in connection with this mathematical
21 exercise, why there's no assumption in this, without a DIP
22 analysis, if you will, of forty-four million dollars coming
23 into the company for the retrospective adjustment. Why not?

24 A. I go back to my statement relative to one, the amount of
25 time it would take to actually negotiate it, based on my

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1 knowledge of the situation. And two, I go back to we wouldn't
2 have been here if we did not have a DIP by this time frame,
3 meaning if we didn't file for bankruptcy and worked to have a
4 DIP, we wouldn't be getting the forty-four million dollars.

5 Q. Okay. Let's move on to another area. Again, on cross-
6 examination you were asked about the contract amendments that
7 have been agreed to with Delta. And specifically, you agreed
8 with Mr. Jonas that your cost structure -- assuming your cost
9 structure is unchanged, those contracts would be money-losing
10 contracts today, is that correct?

11 A. That is correct.

12 Q. Okay. Let's start with this. How does Pinnacle's cost
13 structure today compare with its regional airline competitors?

14 A. It is out of market. Your Honor, it is high. The one
15 thing that has been mentioned quite a bit in this case is the
16 JCBA, which is a joint collective bargaining agreement with the
17 airline pilots association that was signed in February of 2010.
18 That contract, not only on the weight side, but more
19 specifically to work rules, has been very onerous on the
20 organization. Throughout the case will be discussion relative
21 to the ability for pilots to move from different aircraft and
22 the impact that it actually had on training. So with that,
23 when you look at that contract, specifically, it's
24 significantly out of market based on our analysis.

25 The other thing that's important to note, and this goes

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1 into the evaluation that I did with the organization when I
2 joined, there was a significant amount of overhead, meaning
3 management professional staff that I didn't feel was required
4 in the size of the organization, which actually has cascaded
5 throughout the organization. So again, from a cost structure
6 perspective, out of line. So there's a number of things that,
7 as I look at the organization, there is cost savings
8 opportunities, but more importantly, is not in line with the
9 cost structure of other regional airlines.

10 Q. Now, at the time that the debtors agreed to enter into the
11 amended contract with Delta, what was management's expectation
12 with respect to the future profitability of those contracts?

13 A. The future profitability of the contracts, based on our
14 capability of actually reaching, essentially, the cost savings
15 that we're looking for, is that it does become a profitable
16 business.

17 Q. Okay. Now, the cost savings that you're looking for,
18 let's just start with, what are the categories of cost savings
19 that the debtors hope to achieve in the course of these Chapter
20 11 proceedings?

21 A. So in looking at Pinnacle Airlines and looking at the cost
22 structure which we really control, and that gets -- that's the
23 important piece of it is what does the organization actually
24 control, it really revolves around, really, the size of the
25 organization from, let's call it the management structure. It

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1 gets into facilities, it gets into a number of material
2 services relative to our equipment, and then it gets into
3 labor. And there's a small -- smaller bucket. But in
4 comparison to other airlines that I've worked for, it's a much
5 smaller piece that we actually control.

6 Q. Okay. Now, in terms of the labor savings, what -- well,
7 let me back up. You were asked on cross-examination about the
8 milestones in the DIP concerning adjusted operating costs,
9 correct?

10 A. Yes.

11 Q. Okay. First, just at a high level, please give the Court
12 your understanding of those milestones.

13 A. The milestones that we have to reach throughout the
14 process is that we have to reduce our operating expenses, and
15 the threshold, the real threshold that initially was in place
16 was September that we had to have our operating costs,
17 excluding pass-throughs, down to forty-four million dollars per
18 month.

19 Q. Now, in order to hit, if you will, the cost reductions
20 that are provided for in the DIP, where does Pinnacle need to
21 get its labor costs, relative to your regional airline
22 competitors?

23 A. From a dollar perspective, the bucket that we're looking
24 for is approximately forty-two million dollars annually.

25 Q. Okay.

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1 A. And that's all work groups, and it's wages, benefits and
2 work rules that are included in that, not just wages.

3 Q. Okay. And if those cost reductions are achieved, will
4 that bring Pinnacle labor costs in line with its regional
5 airline competitors?

6 A. Based on our analysis, yes.

7 Q. Okay. And I gather in order to --

8 MR. QURESHI: Well, let me restate.

9 Q. In order to achieve the targeted cost reductions, are
10 there savings other than from labor that Pinnacle expects to
11 achieve?

12 A. Yeah, the one we're focused on is material services,
13 actually reducing the overhead structure of the organization to
14 rightsizing it to what the airline will look like in the future,
15 and then the number of facilities that we have. And then we
16 still have the ability to negotiate smaller contracts that we
17 have in what I consider to be the other bucket.

18 Q. You are a member of the board of directors --

19 A. Yes, sir.

20 Q. -- of the debtors, correct? Did you participate in the
21 board meetings in which the DIP and the agreements with Delta
22 were discussed?

23 A. Yes, I was.

24 Q. And can you give me a ballpark of how many times the board
25 met to consider the agreements and the DIP?

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1 A. Yeah. If I could back up a little bit, because I think it
2 goes back to the restructuring to understand how involved the
3 board was not in only the last month, two months as we were
4 focused on potentially bankruptcy, but going back close to,
5 actually, when I joined the organization, Your Honor, is -- I
6 was brought in, ended up going through a series of looking into
7 each of these contracts, pilot contracts, other contracts in
8 the fall of 2011, began to raise the concerns with the board
9 relative to what I was seeing.

10 We ended up bringing financial advisors on, one, to help us
11 do benchmarking in a number of different areas relative to
12 where we were in the industry, as well as actually looking for
13 liquidity, which actually began in the October/November time
14 frame of last year. With that we had made a number of
15 assumptions, meaning the new management team, myself and the
16 new CFO, and provided those to the board of the directors.

17 The board of directors, with that information that we
18 provided, because it was different relative to what they had
19 been seeing prior, asked for outside validation to take place,
20 so we brought a third party in to validate what we had outlined
21 as the concerns. Those concerns were validated, actually, the
22 week of Thanksgiving of last year, and then shortly thereafter
23 we actually filed an 8-K announcing concerns that we had with
24 contracts within the organization as well as bringing advisors
25 on board.

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1 Following that -- and the important thing is I had the
2 board engaged throughout that process, meaning walking them
3 through, having individual meetings with the board of directors
4 to explain the findings that I had, to make sure that they had
5 all their questions answered relative to what we were finding.

6 In December we then began -- we had already began the
7 process of looking for additional liquidity, and we identified
8 a plan that was focused on contract changes with United
9 Airlines, some changes with our labor contracts, as well as
10 discussions with Delta Airlines. Those conversations went
11 through the holidays. We were then notified that -- Delta
12 notified us in early January that they were not going to
13 participate.

14 The organization, at the time, actually, then began to
15 focus on bankruptcy protection, but it's not my nature to do
16 that, and we continued to try to find another path. In
17 extending the runway, we ended up negotiating a deal with the
18 Exportbank of Canada to defer principal and interest payments
19 on our own aircraft. And we entered into an interim agreement
20 with United Airlines that provided us time, really, to April
21 1st to continue to look at solutions. We spent time with some
22 of our other lenders trying to get additional liquidity as we
23 were trying to negotiate, really, our pilot contract and United
24 contract at the time.

25 We were unable to come to terms with our labor groups,

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1 specifically the pilots, at the end of February, and at that
2 point in time is when we really began to focus on putting the
3 organization into bankruptcy. Throughout that process, the
4 board was involved, they understood exactly what we were trying
5 to do to avoid bankruptcy, which led us into the phase of
6 preparing the organization for bankruptcy.

7 I think the most important -- one of the most important
8 meetings that we had with them was actually on March 22nd, that
9 I had recapped for them everything that we had tried to
10 accomplish over the last nine months. In doing that, we
11 recapped for them what we tried to do to keep the organization
12 out of bankruptcy.

13 We also, at that time, walked them through the current
14 situation, where we stood relative to the negotiations with a
15 number of different parties. And then we provided them,
16 essentially, here are the options if we do not find the money,
17 and it really boiled down to finding the DIP, one being,
18 potentially, Delta Airlines or finding another DIP lender. And
19 as everybody has heard, it has been very difficult for this
20 organization to find another DIP lender due to the inability of
21 actually having collateral.

22 And the other option was liquidation. And in doing that,
23 because we were not able to find an additional DIP lender, one
24 that was actually involved -- actually, there was a group that
25 provided us a term sheet in the middle of March. They actually

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1 withdrew from the process towards the end of March, right
2 towards when we were getting close to filing for bankruptcy and
3 we were in the midst of negotiations with Delta.

4 I've heard many things be said here but I can tell you the
5 board was very adamant on a number of different things in
6 getting the organization, if it was going to go into bankruptcy
7 and have to make some changes to Delta contracts that we had to
8 be focused on how do we make sure this organization, at the end
9 of the day, if it's filing, is looking out for the employees,
10 is looking out for the creditors, is looking out for all of its
11 constituents. And that was everything we were focused on as we
12 were going through this process. So the board was very heavily
13 engaged throughout the process.

14 Q. Okay.

15 THE COURT: Mr. Jonas, you rose?

16 MR. JONAS: Too late, Your Honor. I was going to
17 object because I'm not sure what the question was, but it was a
18 narrative answer that I'm sure answered a lot of questions that
19 weren't asked, but at this point we'll just let it --

20 THE COURT: Well, that's right, but narrative answers
21 are sometimes helpful. The more I'm learning about this case
22 the better I like it.

23 MR. JONAS: Understood, Your Honor.

24 THE COURT: Okay.

25 Q. Absent the Delta DIP -- you've testified already that the

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1 company was unable to get any other DIP -- what other
2 alternative did the board consider?

3 A. The board considered going into bankruptcy without a DIP
4 loan.

5 Q. And what conclusion did the board reach with respect to
6 that course of conduct?

7 A. The board concluded that because we did not have any
8 success in finding DIP lenders up to this point in time, the
9 ability for the organization to actually get a DIP lender post
10 of filing was going to be extremely difficult, if not
11 impossible, as it had been impossible up to that point in time.
12 We also were aware that Delta made it very clear that if we
13 filed and weren't going to move forward with them as a DIP
14 lender, they made it clear that, one, they may not be there, or
15 two, the terms aren't going to be what they are today.

16 Q. And did the board consider how that potential course of
17 action would have impacted the debtors' various constituencies?

18 A. Absolutely. It was a very specific topic relative to
19 understanding the roles and responsibilities of the board
20 following a bankruptcy and what their responsibilities are.

21 Q. Okay.

22 MR. QURESHI: Two other quick areas, Your Honor, and
23 then I'll be done.

24 Q. On cross-examination you were asked about the setoff and
25 mutual release agreement, and I just want to touch on that

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1 briefly. And we can refer to the document if we need to, but
2 can you describe for the Court the disputes that were at issue
3 and ultimately settled in connection with that agreement?
4 A. Yes. Your Honor, I'll just give you the line items of
5 what they were.

6 On what Pinnacle thought Delta owed us, it was actually
7 the pilot reset. Because the reset was going to take place on
8 February 17th, there would be an accruing amount that would
9 take place with the pilot reset. There was a dollar amount
10 associated with a heavy maintenance dispute. There was a
11 dollar amount that was associated with the wind-down of Saab
12 340 operation, which is a small aircraft that we operate.

13 THE COURT: It's a turboprop?

14 THE WITNESS: Yes, sir.

15 A. And then the last one was actually related to ARINC.
16 ARINC is a navigation system for the airlines. That's what we
17 felt that Delta owed us.

18 Delta felt that we owed them dollars associated with heavy
19 maintenance on our CRJ-900 contract. It's called Power-by-the-
20 Hour; we call it a PBH agreement. There was also a dispute on
21 heavy maintenance associated with our CRJ-200, which was a
22 fifty-seater, Your Honor.

23 THE COURT: The 900s are bigger?

24 THE WITNESS: Yes, sir; it has seventy-six seats.

25 THE COURT: Go on.

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1 A. The other dispute was associated with commissary, which is
2 really beverages, snacks. That was approximately 1.6 million
3 dollars. There is 300,000 dollars associated with parking in
4 Atlanta airport. And then there is an additional 2.2 million
5 dollars' discrepancy. That was -- the discrepancy is on both
6 sides.

7 Q. So if you total up, if you could, the various categories,
8 in rough numbers, how much were the total claims running from
9 Pinnacle to Delta?

10 A. The claims that Delta was asserting was approximately
11 forty-nine million dollars. The claims that Pinnacle was
12 claiming was approximately sixty-five million dollars. Again,
13 there's a lot of -- and this gets into, as we were moving into
14 negotiating this, there was definitely two different opinions
15 on where each party stood in those discrepancies.

16 Q. Okay. Now, the sixty-five million dollars that Pinnacle
17 claimed it was owed from Delta, included in that is the forty-
18 four million retrospective rate adjustment, correct?

19 A. Yes, sir.

20 Q. Okay. So let's back that out for the moment, because
21 you've already described under the contract what the process is
22 to settle that dispute, or ultimately to arbitrate it.

23 With respect to all of the other items that you've
24 described, running both ways between Pinnacle and Delta, if an
25 agreement could not be reached between the parties

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1 consensually, what did the contract provide for, based on your
2 business understanding, in terms of how to ultimately resolve
3 those disputes?

4 A. Outside of the pilot contract that we already discussed,
5 the other ones would be settled through litigation.

6 Q. And am I correct that you testified on cross that Pinnacle
7 agreed to effectively zero out all of those claims with Delta
8 in connection with the DIP and contract amendment discussions?

9 A. Yes, sir.

10 Q. Okay. Can you please explain to the Court why?

11 A. Because when you looked at it, as I mentioned, there were
12 differences in opinions relative to -- and I'll just focus a
13 little bit on parity in pay as it related to the pilot
14 reimbursement, that Delta had their interpretation, we had our
15 interpretation. You could actually find a situation that we
16 potentially would owe them money at the end of the day,
17 depending on the level of interpretation you have in each of
18 these contracts.

19 Q. Last area, if you could please take out your deposition
20 transcript that you have in front of you. Mr. Jonas asked you
21 to look at some testimony on page 46.

22 A. I'm sorry, which section is that, please?

23 Q. It's your deposition transcript. It should be loose. He
24 directed you to page 46, and he asked you to read a question
25 and answer. You wanted to give an explanation which he

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1 declined to hear.

2 Just so the record's clear, the question was, "So any
3 benefit to reduction of labor costs in bankruptcy also gets
4 passed down to Delta, if you will, correct?" And your answer
5 is, "That's correct."

6 Please give the Court the explanation that you wanted to
7 give to Mr. Jonas.

8 A. Yeah, the savings that I'm assuming gets passed along to
9 Delta in this is based on the rate reset, which would be a
10 lower rate reset if you did not have the pilot reset in what is
11 considered to be the 2013 reset. So they would actually get
12 savings associated with that which would then translate into
13 contractual savings.

14 Q. Well, let me see if we can simplify this area a little
15 bit. Under the old contracts, was labor a pass-through cost?

16 A. No, it was not.

17 Q. Okay. Explain -- let's do it this way. First of all,
18 explain what is a pass-through cost, maybe, by way of
19 example --

20 A. Yeah.

21 Q. -- under the old contract.

22 A. Pass-through costs are operations similar to ground
23 handling; that's a pass-through cost, meaning we essentially --
24 ground handling, landing fees when an aircraft lands, those are
25 expenses that we actually have and we pass them along to Delta

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1 Airlines. That's a pass-through cost.

2 Q. Okay. Under the old contracts, if Delta -- if Pinnacle,
3 rather, experienced an increase in its labor costs, what
4 mechanism, if any, was available for Pinnacle to shift that
5 increased cost to Delta?

6 A. There was not, because that was built in the negotiated
7 rate which goes into the block hour.

8 Q. And explain what that negotiated rate is and how changes
9 in labor costs impact that rate, if at all.

10 A. It's different for different regional airlines and the
11 capacity purchase agreements they have. What typically takes
12 place is when you negotiate a capacity purchase agreement with
13 United or Delta, you negotiate a block hour rate, a flight hour
14 rate, different variables. So in doing that, you then get an
15 annual increase that could be based on CPI or CPPI. So any --
16 and that's what you get paid relative to flying the aircraft
17 for one hour. How you manage your cost structure is really up
18 to you, meaning you built the contract based on your expenses,
19 but if you decided that you wanted to give everybody a ten
20 percent pay increase, that does not get passed along. That
21 gets -- that ends up being impacted, or it actually gets
22 deducted relative to the dollars that you're earning from the
23 partner carrier.

24 Q. Last question. Given your testimony that today, with
25 absolutely no changes in Pinnacle's cost structure, the amended

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1 Delta contracts would be money losers, in light of that
2 testimony, please just explain to the Court in your words why
3 the company elected, nonetheless, to proceed with those
4 contracts.

5 A. One, it was a condition relative to getting the DIP. The
6 other thing that I think is very important, and this goes into
7 the phase that this organization is right now, and that's
8 building a viable company that actually can be profitable with
9 these contracts but is also important relative to the airline
10 actually growing. And the capability of this airline growing
11 is really based on its cost structure. And that's competing
12 against other regional marketplace -- other regional airlines
13 in the marketplace. And our capability of actually executing
14 upon the budget that we have put together will give this
15 organization, one, the capability of being profitable with the
16 Delta contracts, but two, it'll give it a platform that it can
17 actually go out and bid on contracts or bid on flying in the
18 future. That would be beneficial, I believe, to the employees
19 and a number of other constituents.

20 Q. Thank you.

21 MR. QURESHI: No further questions.

22 THE COURT: Okay. Recross, limited, of course, to
23 what you heard in redirect.

24 MR. JONAS: No further questions. No further
25 witnesses, Your Honor.

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1 THE COURT: Oh, okay.

2 Then Mr. Menke, you're excused, and if I -- Mr.

3 Seltzer, are you rising to question?

4 MR. SELTZER: I'm rising to not question, Your Honor.

5 THE COURT: Oh.

6 MR. SELTZER: I just -- but I just wanted to clarify
7 the record. There obviously was some testimony about the
8 comparative labor rate, et cetera, that may become relevant if
9 there, unfortunately, ever is an 1113 proceeding. We don't
10 want to litigate that today. We don't want to have a mini 1113
11 hearing today. We just want to reserve our rights, but we
12 don't want someone to say later that since we didn't question
13 the witness we were somehow accepting his testimony.

14 THE COURT: Would it be helpful if I were to say,
15 assuming the other parties agree, that the testimony that we
16 heard today was solely for the purpose of the DIP?

17 MR. SELTZER: That would be very helpful, Your Honor.

18 THE COURT: Is there any objection to that?

19 MR. JONAS: No objection.

20 MS. BECKERMAN: No, Your Honor.

21 MR. SELTZER: Thank you, Your Honor.

22 THE COURT: Okay, Mr. Kolko, the same thought?

23 MR. KOLKO: Yes, thank you, Judge.

24 THE COURT: Okay. Mr. Menke, you can sit and stay or
25 leave, as you prefer.

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1 Okay. If I heard you all right, we have no further
2 questioning. Does anybody have the desire to make remarks in
3 the nature of summation based on the live testimony that was
4 heard?

5 MR. JONAS: Not here, Your Honor.

6 MR. BECKERMAN: Not here, Your Honor.

7 THE COURT: Okay. Then are we in a position where we
8 can take a recess so that I can rule?

9 All right. I can't give you any assurances as to how
10 long it'll take me. I'd like to have you back in about forty-
11 five minutes, but I may have you cooling your heels, if it runs
12 longer. But that's what we're going to do.

13 We're in recess.

14 MR. QURESHI: Thank you, Your Honor.

15 MS. BECKERMAN: Thank you, Your Honor.

16 (Recess from 3:53 p.m. until 5:50 p.m.)

17 THE COURT: Have seats, please. I apologize for
18 keeping you all waiting.

19 In this contested matter in the Chapter 11 cases of
20 Pinnacle Airlines and its affiliates, I have the debtors'
21 motion for approval of their DIP financing from Delta Airlines.

22 The motion for approval of that facility on the terms
23 set forth in the motion and the proposed revised order that was
24 submitted to my chambers after the creditors' committee got
25 involved is approved, subject only to confirming in that

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1 approval order what Mr. Seligman, counsel for Delta, stated on
2 the record today in response to the two concerns I previously
3 had. The objections, to the extent not withdrawn before I had
4 to rule, and except as they were addressed by Mr. Seligman's
5 remarks, are overruled.

6 The following are my findings of fact and bases for
7 the exercise of my discretion in that regard.

8 Turning first to my findings of fact, I found the
9 debtors' witness, Mr. Menke, whose testimony I heard live, to
10 be fully credible in everything he said today, and I have no
11 reason to doubt either his testimony by declaration or the
12 other evidence that was submitted by declaration. Thus, my
13 decision is also informed by what appeared in the declarations.

14 The factual dispute, to the extent one exists, it
15 seems to me, is not with respect to the underlying facts, but
16 rather with respect to the wisdom of the debtors and their
17 advisors having made decisions or proposing to act
18 prospectively based on largely or wholly undisputed facts, and
19 to the extent it's different, on the extent to which Delta
20 should be blamed for the debtors' difficulties and whether past
21 events or the relationship between Delta and the debtors,
22 should cause Delta to be disqualified as a DIP lender.

23 Of course, there's another technically separate issue
24 as to the extent to which the Farmland factors are satisfied,
25 and the extent to which imperfections in the DIP financing deal

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1 that was ultimately reached should cause me to disapprove it
2 and tell the debtors they should start over or proceed with no
3 DIP financing at all. I'll deal with some of those latter
4 concerns shortly.

5 I find as facts that the debtors have a critical need
6 for DIP financing and are in a liquidity crunch. I accept as
7 true the testimony I heard that the debtors simply can't run
8 without less than a minimum of twenty million dollars in cash
9 at any time and that without the proposed DIP financing, the
10 debtors will go way below that number. I accept as true that
11 they could go down as low as five million dollars if they don't
12 receive the DIP loan and if Delta exercised its setoff rights,
13 which is at least foreseeable. If the DIP financing is
14 disapproved, the debtors will have to continue searching for
15 alternative sources of DIP financing with no alternatives
16 having yet been identified, if they ever will be, while the
17 debtors' funds continue to dwindle. If the debtors run out of
18 working capital, they'll have to halt all operations, and all
19 pilots, flight attendants, and ground handling employees would
20 have to be terminated. Under those circumstances, I would see
21 little alternative to liquidation.

22 The DIP financing is not a luxury; it is a necessity,
23 as the debtors will otherwise run out of the necessary
24 liquidity on or shortly after June 1, about two weeks from now.
25 That is a highly material fact, in my view, whose importance

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1 has been understated by the objectors. I think we all must
2 keep it in mind.

3 I also find as a fact that the debtors and their
4 agents, including a skilled investment banker, conscientiously
5 shopped for alternative DIP financing options, but none was
6 forthcoming. The evidence was persuasive that the debtors were
7 not an attractive DIP-lending candidate for a number of
8 reasons, including, perhaps most significantly, an inability to
9 offer collateral in the quantity and quality that DIP lenders
10 typically require. It was no surprise to me that Mr. Shapiro
11 couldn't find alternative financing that might be a practical
12 alternative for what we have before me. The offer from Delta
13 is the only option the debtors have. Neither objector disputed
14 that, and objector Jonas expressly conceded that. I don't
15 fault him for that, of course; he was just arguing the matter
16 with candor.

17 I also find as a fact that it wasn't Delta that forced
18 the debtors into bankruptcy. It was an amalgam of many factors
19 including delays in integrating the flying of debtors'
20 subsidiaries, unanticipated developments arising out of the new
21 joint collective bargaining agreement with the debtors' pilots,
22 increasingly unprofitable contracts with airline customers, and
23 poor operational performance and increased operational
24 expenses.

25 Let me pause to underscore the two main factual

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1 findings that I've just made, putting aside the details and
2 going right to the bottom line, putting them in the plainest
3 possible terms. Without DIP financing, the debtors are going
4 to run out of money, and they have no DIP financing
5 alternatives. So if I disapprove the financing, the debtors
6 will lose the liquidity that is essential to their survival.
7 The objectors essentially ask me to ignore that. My
8 unwillingness to ignore that underscores the exercise of my
9 discretion in significant aspects throughout the remainder of
10 this decision. Other relevant factual findings appear in the
11 remainder of this discussion.

12 Now, turning to my conclusions of law and bases for
13 the exercise of my discretion. Both sides agree that the
14 standards applicable to consideration of a Section 364 motion
15 of this character appear in Judge Jerry Venters' decision in
16 Farmland Industries, 294 B.R. 855, 880 (W.D. Mo. 2003). As
17 Jerry Venters observed after synthesizing the earlier cases, a
18 court considering a motion for Section 364 financing should
19 consider whether (1) the proposed financing is an exercise of
20 sound and reasonable business judgment, (2) the financing is in
21 the best interests of the estate and its creditors, (3) the
22 credit transaction is necessary to preserve the assets of the
23 estate and is necessary, essential, and appropriate for the
24 continued operation of the debtors' businesses, (4) the terms
25 of the transaction are fair, reasonable and adequate, given the

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1 circumstances of the debtor-borrower and the proposed lender,
2 and (5) the financing agreement was negotiated in good faith
3 and at arm's length between the debtors on the one hand and the
4 proposed DIP lender on the other. See 294 B.R. at page 881.
5 After considering those factors, as I've indicated, I've
6 determined that the DIP financing should be approved, and as I
7 mentioned, the proposed order requires only the slightest
8 tweaking.

9 Turning now to the particular Farmland factors and the
10 facts that inform my consideration of each of them. One:
11 business judgment. In this case, I have the luxury -- which I
12 don't always have, especially in my smaller Chapter 11 cases --
13 of a fully functioning debtor board of directors. The evidence
14 supports a finding, and I find that the debtors' board
15 carefully considered their DIP financing options as well as the
16 debtors' other courses of action as its liquidity crisis
17 increased, including with respect to the terms of the DIP
18 financing that would be offered. I find that in connection
19 with securing the DIP financing, the debtors' board exercised
20 appropriate business judgment and that it held the meetings and
21 otherwise took the steps necessary to provide a sound basis for
22 the exercise of business judgment. I also find that the DIP
23 financing was satisfactorily shopped and that after a diligent
24 search, the debtors did not have alternate financing
25 opportunities, much less did they reject any.

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1 Two: best interests of the estate. I further find
2 that the DIP financing that the debtors secured is in the best
3 interests of the estate. Indeed, I find that in the absence of
4 DIP financing, the likely, if not certain alternative would be
5 liquidation, a result that would be disastrous for the debtors'
6 creditors, employees, vendors, and any who might have tort
7 claims against the debtors. I think it's significant that
8 neither of the remaining objectors disputed that the debtors
9 have no alternatives. In substance, they simply wanted me to
10 disapprove the financing anyway. Frankly, I can't imagine how
11 I or any other judge could act so irresponsibly.

12 Particular terms of the DIP financing, and in
13 particular, other aspects of the overall deal, such as the
14 settlement and the assumption of contracts that were revised on
15 the eve of filing of the Chapter 11 case, have been criticized
16 by the objectors. Some aspects of those are not optimum, but
17 the debtors have satisfactorily explained that they tried to
18 get better terms and were only partially successful. The
19 creditors' committee tried to get better terms, and while it
20 succeeded in some very helpful respects, I don't know if the
21 creditors' committee would say that it was totally successful,
22 either. But getting better terms was an exercise in achieving
23 the attainable. The evidence strongly supports a finding, and
24 I find that there was an imbalance in bargaining power, and
25 that under the circumstances, the debtors did pretty well. As

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1 importantly, Mr. Menke's testimony evidenced how the debtors
2 lacked the ability, as a practical matter, to hold out for
3 better recoveries on the forty-four million dollars and on
4 other sums due or possibly due to them and that if they waited
5 for arbitration or plenary litigation to take its course, they
6 likely, if not certainly, would have run out of money before
7 they collected any material portion of the amounts in question.

8 One way -- it's not the legal test, of course -- that
9 I think about best interest of the estate issues, and this, of
10 course, is in contrast to business judgment issues, is to see
11 whether I would have made the same decisions under the
12 circumstances. And here, I think I would.

13 Three: necessity. The next factor can be analyzed
14 with the shorthand catch-line as "necessity". It asks whether
15 the credit transaction is necessary to preserve the assets of
16 the estate and is necessary, essential, and appropriate for the
17 continued operation of the debtors' business. Here, the answer
18 to that question can't seriously be disputed, though I was
19 surprised by the failure of the objectors to address it more
20 directly. The debtors desperately need this money. It's
21 essential to the continued operation of the debtors' business.
22 They have no alternative. What more can we say?

23 The objectors don't dispute that or any of those
24 facts, but in essence, they want me to disapprove the financing
25 anyway. I won't accept that gamble. First, of course, I must

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1 note that total absence of any evidence from the objectors or
2 anywhere else in the record of any alternatives. In essence,
3 the objectors want me to either hope that something nobody now
4 knows about will materialize, or they want me to play chicken
5 with Delta, leaving the debtors hanging out with no DIP
6 financing at all on the assumption that something might
7 materialize. I'm not of a mind to require the debtors to do so
8 or to engage in such an exercise, myself.

9 What they ask me to do is remarkably similar to what I
10 was asked to do in two other large Chapter 11 cases on my watch
11 earlier in my judicial tenure: Adelphia and General Motors.
12 In Adelphia, certain bondholders asked me to disapprove a
13 settlement with the U.S. government under which Adelphia would
14 provide a very large amount of plan consideration to the
15 government to settle civil litigation against the company and,
16 more importantly, avoid a criminal indictment of the company,
17 as contrasted to the former Adelphia officers who had acted so
18 badly. The objectors said the government would never really
19 indict the company, and they faulted the company's board for
20 declining to take the gamble. I said I couldn't blame the
21 board for not betting the company on that gamble, and I
22 approved the settlement. As I said in that decision, it was at
23 least prudent for Adelphia's board to protect the entity under
24 its stewardship from its destruction and to avoid taking such a
25 gamble. I said the Adelphia board couldn't be faulted for

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1 declining to bet the company on what would be little more than
2 a guess as to the decision that the counterparty, there the
3 DOJ, would make. On appeal of that determination, Judge Lewis
4 Kaplan of the district court, focusing on that exact issue,
5 affirmed me in that respect and others.

6 Similarly, in General Motors, bondholders were
7 objecting to the 363 sale of the company, telling me that they
8 preferred a much longer Chapter 11 and that I shouldn't take
9 the U.S. government at its word when it said it wouldn't
10 finance a Chapter 11 case of that duration. I observed,
11 referring to remarks of GM's -- General Motor's counsel, in
12 summation, that the objecting bondholders were "expecting this
13 Court to play Russian roulette," and the comparison was apt.
14 So that they could throw the company into a plan negotiation
15 process, I, as the Court, would have to gamble on the notion
16 that the U.S. government didn't mean it when it said that it
17 would not keep funding GM. And I continued in language that
18 has a fair amount of analogy here: "There's no reason why any
19 fiduciary or any court would take that gamble." And I
20 continued, "This is hardly the first time this Court has seen
21 creditors risk Doomsday consequences to increase their
22 incremental recoveries, and this Court, which is focused on
23 preserving and maximizing value, allowing suppliers to survive
24 and helping employees keep their jobs, is not of a mind to
25 jeopardize all those goals."

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1 It requires very little of a jump to change creditors
2 to equity securityholders and to see how considerations of that
3 character have equal applicability here when people are asking
4 me to disapprove a DIP financing facility that is so important
5 to the company's health. Here, the need for this financing is
6 there; it's essential; it's critical. And the objectors don't
7 contend to the contrary. Given that, I don't think that the
8 risk of the consequences of disapproval can responsibly be
9 ignored.

10 Next, five: good faith. And I'm going to skip to the
11 fifth factor, coming back to the fourth, because that requires
12 a little more discussion. The fifth factor is referred to, in
13 shorthand, as "good faith". Stated more fully, the Court must
14 consider whether the financing agreement was negotiated in good
15 faith and at arm's length between the debtors, on the one hand,
16 and the DIP lender, on the other. Here, I find as a mixed
17 question of fact and law that the financing was negotiated in
18 good faith. This was an arm's-length negotiation, and an
19 imbalance in bargaining power doesn't make a negotiation any
20 less at arm's length. It just inevitably affects how
21 successful the weaker party can hope to be, as Judge Kaplan
22 observed when he affirmed me on that Adelphia settlement. See
23 337 B.R. 475. And, of course, the participation of the
24 creditors' committee to help improve the deal gives me further
25 comfort in this regard.

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1 Then going back to factor number four: particular
2 terms. This is the only factor as to which there really can be
3 any legitimate debate, that dealing with particular terms of
4 the transaction which, in a perfect world, many would prefer
5 not to have at all or in the form in which they appear. The
6 full standard, as articulated by Judge Venters in Farmland
7 Industries, is whether the terms "are fair, reasonable, and
8 adequate given the circumstances of the debtor-borrower and the
9 proposed lender." This factor requires a court to look at any
10 particular terms that are the subject of the objection. A
11 bankruptcy court has the power to say it won't approve one or
12 more of such terms, but at the same time, the court can't
13 require a lender to lend, and thus, the bankruptcy court must
14 use its power with some common sense, knowing that if it
15 overreaches and tries to rewrite a deal under which tens of
16 millions of dollars of financing are to be advanced, the lender
17 will simply say, nope, I just won't lend on that basis. I
18 won't lend if I lose the protection I need or want.
19 Importantly, that standard requires the Court to consider the
20 last clause of the language I quoted, "given the circumstances
21 of the debtor-borrower and proposed lender". A court can't
22 ignore those circumstances. Decisions of this character are
23 made in the real world.

24 With all of that stated, there are, of course, terms
25 that DIP lenders sometimes ask for that are beyond the pale,

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1 that are overreaching by the DIP lenders, and that simply
2 require the court to say no, I'm not going to bless that.
3 Fortunately, this case is not in that category.

4 In the connection of looking at the particular terms,
5 we judges look at those terms with the prism, if I can use that
6 expression, of what has become customary in DIP financing
7 transactions and look to legitimate needs and concerns of the
8 lender's side. And I'm going to talk about some of those
9 particular terms in that context. Milestones have become
10 common in DIP financing transactions, as was shown at some
11 length by the debtors in their papers, having given me tables
12 with respect to several of the important provisions evidencing
13 their basis in precedent. Though I wish it were otherwise,
14 terms that I would prefer not to have in a perfect world have
15 now become common, if not customary, in DIP financing
16 transactions. Though I wish it were otherwise, I've learned to
17 live with DIP financing facilities with durations of only one
18 year; facilities of longer duration are much rarer than they
19 were when I started doing bankruptcy work, and even when I came
20 on the bench.

21 Milestones for filing a plan have also become
22 customary, or at least ubiquitous, and they're also acceptable,
23 so long as the time to do so isn't unreasonable under the
24 circumstances. Here, that deadline is within the range of
25 reasonableness.

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1 DIP lenders also have legitimate needs and concerns
2 with respect to getting paid back. That is the concept
3 underlying change-of-control provisions which are sometimes
4 referred to in slang as "know thy borrower". The legitimate
5 need to get paid back also justifies many provisions requiring
6 the debtor to show progress in increasing its profitability,
7 and though I wouldn't provide an advisory opinion as to the
8 extent to which they're appropriate in other cases with each
9 case being unique, and Farmland having reminded us that the
10 inquiry is made "given the circumstances" of the debtor and
11 lender, I think they're okay here.

12 I did have reservations as to a potential impairment
13 of my ability to do my job in helping the debtors' management
14 and labor get along with each other and to reach a consensual
15 resolution without requiring a full-blown and potentially
16 stressful 1113 hearing; and Delta, to its credit, gave me the
17 extra comfort I needed in that regard; the creditors' committee
18 was also helpful in that respect.

19 Rollups are evaluated on a case-by-case basis. Here,
20 I found the explanations for the rollup, including as most
21 important to me, Delta's setoff rights, to be satisfactory, and
22 I saw no material prejudice to the unsecured creditors in this
23 case or to the equity which, of course, represents the
24 objectors here. The releases aren't as broad as the objectors
25 thought they were, and in any event, strike me as reasonable

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1 under the circumstances.

2 To the extent I haven't expressly discussed other
3 particular terms that were the subject of the objection, it's
4 only because I've been talking for so long and I've already
5 gone at such great length. But to the extent it's necessary
6 for the record, I've considered the other points and rejected
7 them.

8 Now, with that said, I do not find all of the
9 individual terms that are part of this DIP financing
10 transaction necessarily to be desirable from the debtors'
11 perspective or even find that those terms are wholly benign.
12 But at the risk of repeating myself, decisions of this
13 character must be made in light of the risks associated with
14 disapproving the proposed DIP financing facility, and in light,
15 especially, of the debtors' need for DIP financing, the
16 alternatives or lack of alternatives, and the consequences of
17 disapproval, nor do I suggest or especially rule, that each of
18 these terms would be appropriate in another case or under other
19 circumstances. But they all have a basis in precedent, and
20 under the facts here, are not unreasonable.

21 Finally, a few other considerations. I don't analyze
22 a DIP financing facility by counting noses as to who supports
23 the facility and who objects. I look, instead, to the Farmland
24 factors. But consideration of the level of comfort of the
25 stakeholders whose money and jobs are on the line is often a

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1 useful reality check when considering a motion of this
2 character. Thus, it's worthy of mention that none of the
3 senior stakeholders or more senior stakeholders now object.
4 The creditors' committee, the fiduciary for all of the debtors'
5 unsecured creditor, now supports the DIP financing after
6 successful efforts to improve it. It likewise is worthy of
7 mention that the debtors' union creditors either did not oppose
8 the DIP financing or withdrew their objections even though they
9 well understand that the debtors will be looking to negotiate
10 concessions from them. Having done this job for many years, I
11 think I can infer the reasons. They recognize the lack of
12 alternatives and that a liquidation would grievously hurt
13 everybody.

14 Finally, on a motion involving an exercise of my
15 discretion, I'm allowed to use my experience on the job, which
16 in large Chapter 11 cases is substantial. I can't help but
17 notice that the two objectors are at the very bottom of the
18 capital structure. It's more than occasionally tempting for
19 those who are at the low end of the capital structure to want
20 the estate to gamble on approaches that would more likely put
21 them into the money -- or put them more in the money,
22 subjecting the more senior classes to the resulting risk.
23 There's nothing unethical about that; if I were a lawyer and
24 advocate, I might do the same. But I'm not a lawyer and
25 advocate anymore. I'm in the judge's role looking out for the

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1 welfare of the estate as a whole. If I disapprove this
2 facility, there's no plan B. Taking the gamble that
3 equityholders want the debtor to take would subject the debtors
4 to the risk of liquidation. I wasn't prepared to subject the
5 stakeholders in General Motors to that risk, and I won't do so
6 here.

7 Ms. Beckerman, you or your colleagues are to work with
8 Delta to paper the things that I was told earlier in today's
9 hearing, to stick them into the DIP financing order, and to get
10 it to me at your earliest reasonable convenience. The time to
11 appeal or move for leave to appeal this determination will run
12 from the time of the entry of that order and not from the time
13 of this dictated decision.

14 It's been a long day and a long night. We're
15 adjourned.

16 (Whereupon these proceedings were concluded at 6:26 PM)

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2 C E R T I F I C A T I O N

3

4 I, Penina Wolicki, certify that the foregoing transcript is a
5 true and accurate record of the proceedings.

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Penina Wolicki

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PENINA WOLICKI

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Date: May 21, 2012

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